

APPENDIX 1

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION

MICHAEL CLOUD, :
 :
Plaintiff, :
 : Civil Action No.:
vs. :
 : 3:20-CV-01277-E
THE BERT BELL/PETE ROZELLE :
NFL PLAYER RETIREMENT PLAN, :
 :
Defendant. :

INDIVIDUAL AND 30(b)(6) DEPOSITION OF
HESSMAN VINCENT

DATE: August 10, 2021
TIME: 10:06 a.m. to 8:34 p.m.
LOCATION: Groom Law Group
1701 Pennsylvania Avenue
Suite 1200
Washington, D.C. 20006

REPORTED BY: Felicia A. Newland, CSR

Veritext Legal Solutions
1250 Eye Street, N.W., Suite 350
Washington, D.C. 20005

16 Q Mr. Reynolds is no longer on the
17 committee. Is that correct?

18 A That's correct.

19 Q What's his role at the board meetings
20 now that he is no longer on the committee?

21 A He decides -- he advises the board on
22 board decision, appeal claims. No longer the

Page 18

Page 20

1 initial claims.

Page 19

Page 21

6 (Pages 18 - 21)

	<p>4 So if Patrick Reynolds or Chris Smith</p> <p>5 was talking to board members about appeals, I would</p> <p>6 need to talk to the members of the board to ask</p> <p>7 them whether they received advice from Patrick</p> <p>8 Reynolds or Chris Smith, correct?</p> <p>9 A That is a possibility. Or you could</p> <p>10 ask Patrick Reynolds or Chris Smith if they do.</p> <p>11 Q If Patrick Reynolds or Chris Reynolds</p> <p>12 didn't recall whether they talked to the board or</p> <p>13 not, the best people for me to talk to whether they</p> <p>14 spoke to Chris Smith or Patrick Reynolds would be</p> <p>15 the board members. Is that right?</p> <p>16 A That may be the case, yes.</p> <p style="text-align: right;">--</p> <p style="text-align: right;">Page 24</p>
<p>2 Q So if I had to determine whether</p> <p>3 Ms. Smith or Mr. Reynolds were providing advice to</p> <p>4 the board while they were both on the committee, I</p> <p>5 would have to ask Patrick Reynolds or Chris Smith</p> <p>6 about that, correct?</p> <p>7 A That's correct.</p> <p>8 Q And the only other people that would</p> <p>9 know whether Chris Smith or Patrick Reynolds were</p> <p>10 providing advice to the board and their specific</p> <p>11 communications or conversations, would be the board</p> <p>12 members themselves, correct?</p> <p>13 A Yes. That may be the case. But as</p> <p>14 far as I'm --</p> <p style="text-align: right;">Page 23</p>	<p>5 understanding for what you mean? In relation to</p> <p>6 what?</p> <p>7 A Mr. Cloud's appeal.</p> <p>8 Q Okay. So you talked to Ms. Blackburn</p> <p>9 yesterday specifically about Mr. Cloud's appeal,</p> <p style="text-align: right;">Page 25</p>

<p>5 Q Did she ever recall reviewing 6 Mr. Cloud's case? 7 A I don't recall if we asked her the 8 question in that manner, but she did decide on 9 Mr. Cloud case.</p> <p>Page 26</p>	<p>16 If I wanted to know what was 17 discussed for Ms. Blackburn to come to her decision 18 to deny Mr. Cloud's request for benefits, I would 19 have to ask her that question because you didn't 20 ask her, right? 21 A I did not ask her, that's correct.</p> <p>Page 28</p>
<p>7 Q Did you ever ask whether 8 Ms. Blackburn had any recollection as to any 9 discussion or debate as to Mr. Cloud's case? 10 A I don't recall if a question was 11 asked in that manner. But there was nothing unique 12 that popped out to her about the case.</p> <p>Page 27</p>	<p>14 Q Did you ever ask Ms. Blackburn 15 whether she discussed Mr. Cloud's case with Patrick 16 Reynolds and Chris Smith? 17 A I did not ask that. 18 Q Did you user ask Ms. Blackburn what 19 advice she received from third parties about 20 Mr. Cloud's case? 21 A I did not ask that question.</p> <p>Page 29</p>

5 Q So was there something that was asked
6 about his review and any independent research that
7 he conducted?

8 A No. It was nothing along those
9 lines.

10 Q Okay. Did you ask Mr. Cass whether
11 he received any advice from a third-party adviser
12 as it pertains to Mr. Cloud's case?

13 A I did not ask that question.

Page 30

Page 32

9 Q Did you ask Mr. Cass if he recalled
10 any discussions he had with any fellow board
11 members been Mr. Cloud's case?

12 A I did not ask that question.

Page 31

Page 33

9 (Pages 30 - 33)

<p>1</p> <p>6 Q And there was no discussion that --</p> <p>7 let me ask it a different way.</p> <p>8 You did not ask Mr. Cass whether he</p> <p>9 had any discussions about Mr. Cloud's case with any</p> <p>10 of the other board members. Is that correct?</p> <p>11 A I did not ask that question.</p> <p>--</p> <p>Page 34</p>	<p>11 Q Did you actually ask him what</p> <p>12 conversations he had with other members of the</p> <p>13 board about his decision on Mr. Cloud's claim?</p> <p>14 A I did not.</p> <p>15 Q Did you ask him whether he spoke to</p> <p>16 Mr. Reynolds or Ms. Smith in his review of</p> <p>17 Mr. Cloud's case?</p> <p>18 A I did not.</p> <p>?</p> <p>Page 36</p>
<p>5 Q What was Mr. Philip's response to</p> <p>6 those questions?</p> <p>7 A The same as the previous two; no</p> <p>8 unique knowledge, no notes kept, didn't review</p> <p>9 outside the meeting's website.</p> <p>10 Q Did Mr. Philips recall actually</p> <p>11 reviewing any of Mr. Cloud's records?</p> <p>12 A He doesn't recall the case.</p> <p>Page 35</p>	<p>6 Q Did you ask whether they ever kept</p> <p>7 any notes?</p> <p>8 A Not specifically in that manner, no.</p> <p>9 We asked them if they had any notes, and they do no</p> <p>10 have any notes.</p> <p>Page 37</p>

<p>6 Q So if a board member was to keep</p> <p>7 notes of their analysis of medical records and</p> <p>8 information presented in a disability application,</p> <p>9 they would keep those personally and independently</p> <p>10 of the benefits office. Is that correct?</p> <p>11 A That may be the case if they are</p> <p>12 keeping notes.</p> <p>Page 38</p>	<p>3 Q Did Mr. McCullum have any</p> <p>4 recollection of medical records presented by</p> <p>5 Mr. Cloud?</p> <p>6 A I didn't ask that question</p> <p>7 specifically.</p> <p>8 Q Did Mr. McCullum recall or have any</p> <p>9 recollection of the injuries, illnesses, ailments,</p> <p>10 that Mr. Cloud was presenting?</p> <p>11 A I didn't ask that question.</p> <p>12 Q Did Mr. McCullum recall ever having</p> <p>13 any conversations with Mr. Reynolds or Ms. Smith</p> <p>14 about Mr. Cloud's appeal?</p> <p>15 A That question was not asked.</p> <p>16 Q Did Mr. McCullum have any</p> <p>17 recollection of any discussion, conversations or</p> <p>18 debates between him and other members of the board</p> <p>19 relating to Mr. Cloud's request for benefits?</p> <p>20 A That question was not asked.</p> <p>Page 40</p>
<p>Page 39</p>	<p>Page 41</p>

<p>8 Q Did he confirm to you that he</p> <p>9 actually did review Mr. Cloud's medical records?</p> <p>10 A I did not ask that question.</p> <p>11 Q Did you ask Mr. Van Note whether he</p> <p>12 had any conversations with Mr. Reynolds or</p> <p>13 Ms. Smith about Mr. Cloud's applications for</p> <p>14 disability benefits?</p> <p>15 A I did not ask that question.</p> <p>16 Q Did you ask Mr. Van Note whether he</p> <p>17 recalled any conversations or communications he had</p> <p>18 with any other board members about Mr. Cloud's</p> <p>19 medical records or applications for disability</p> <p>20 benefits?</p> <p>21 A I did not ask that question.</p> <p style="text-align: right;">Page 42</p>	<p>1 Q Did Mr. Smith recall ever having any</p> <p>2 notes analyzing Mr. Cloud's request for disability</p> <p>3 benefits and associated medical records?</p> <p>4 A I'm not sure of that.</p> <p>13 Q Did you ask Mr. Smith about any</p> <p>14 discussions or debates he had with any other</p> <p>15 members of the board about Mr. Cloud's case?</p> <p>16 A I did not ask that question.</p> <p>17 Q Did you ask Mr. Smith whether he had</p> <p>18 any conversations with Mr. Reynolds or Ms. Smith</p> <p>19 about Mr. Cloud's application and request for</p> <p>20 benefits?</p> <p>21 A I did not ask that question.</p> <p>22 Q Did you ask Ms. Smith whether he</p> <p style="text-align: right;">Page 44</p>
	<p>1 received any advice from any third party about</p> <p>2 Mr. Cloud's request for benefits?</p> <p>3 A I did not ask that question.</p> <p>13 Q So I will tell you that from</p> <p>14 Ms. Smith's deposition, she said she recalled maybe</p> <p>15 10, maybe 15 reclassification requests that she</p> <p>16 handled as a member of the committee.</p> <p>17 Does that sound fair from your</p> <p>18 knowledge and your recollection?</p> <p>19 A Is she stating that as ever under her</p> <p>20 capacity or in a yearly manner?</p> <p>21 Q I believe she said ever.</p> <p>22 A That could be a fair assessment. I</p> <p style="text-align: right;">Page 45</p>

<p>1 would say it's not common.</p> <p>21 Did you ask any of the board members</p> <p>22 who were in place at the time of Mr. Cloud's appeal</p> <p style="text-align: right;">Page 46</p>	<p>1 Q Did you ask any of the board members</p> <p>2 that were in place at the time of Mr. Cloud's</p> <p>3 appeal whether they personally know or knew</p> <p>4 Mr. Cloud?</p> <p>5 A I did not ask that question.</p> <p>6 Q Did that come up in any of the</p> <p>7 conversation?</p> <p>8 A No.</p> <p style="text-align: right;">Page 48</p>
<p>1 whether they had reviewed Mr. Cloud's lawsuit?</p> <p>2 A No, I did not.</p> <p>6 It's my understanding that</p> <p>7 Ms. Blackburn, Mr. Cass, and Mr. Philips were</p> <p>8 appointed by the NFL Management Council. Is that</p> <p>9 correct?</p> <p>10 A That's correct.</p> <p>11 Q Sam McCullum and Jeff Van Note and</p> <p>12 Robert Smith were appointed by the Players</p> <p>13 Association. Is that correct?</p> <p>14 A That's correct.</p> <p style="text-align: right;">Page 47</p>	<p>7 Q Did you actually ask the questions of</p> <p>8 the board members?</p> <p>9 A I did not.</p> <p style="text-align: right;">Page 49</p>

5 Q So are you saying that the questions
6 that you said were not asked, were not asked period
7 or you just personally didn't ask them?

8 A The original questions were not asked
9 by me, and I didn't do any follow-up questions.

Page 50

Page 52

Page 51

14 (Pages 50 - 53)

<p>12 Q When you're referencing the X file,</p> <p>13 are those the 860 pages of records that were</p> <p>14 produced through this portal by the Groom Law Firm</p> <p>15 on January 18, 2019?</p> <p>16 MR. JUNK: Mr. Dennie, this is Mike</p> <p>17 Junk. I'm sorry. I just want to clarify, like you</p> <p>18 said trying to get you through this. The X file</p> <p>19 this the Bates prefix used to designate documents</p> <p>20 that we produced to plaintiff. So with that</p> <p>21 understanding, that's what he's referring to. So</p> <p>22 I'll just leave it to you. I apologize. Go ahead.</p> <p style="text-align: right;">Page 62</p>	<p>1 your lips, so I may interrupt you. So I'm not</p> <p>2 trying to talk over you, it's just I can't see your</p> <p>3 mouth, so it's a little bit more difficult.</p> <p>4 A I understand.</p> <p>5 Q So I apologize because I have done</p> <p>6 that a few times already.</p> <p>7 Okay. Like I said, I just want to</p> <p>8 make sure I'm understanding what documents you</p> <p>9 understand those to be. You recall the X file</p> <p>10 being approximately 860 pages of record?</p> <p>11 A No. I believe the X file is well</p> <p>12 over that. It's 1,500, or so, pages if I'm not</p> <p>13 mistaken.</p> <p>14 Q Okay. Fair enough.</p> <p>15 So as we've gone through this, you've</p> <p>16 indicated that you have looked at the line of</p> <p>17 questions that are being asked on the 30(b)(6)</p> <p>18 request, the original complaint filed by Mr. Cloud</p> <p>19 in this case, the administrative record and the X</p> <p>20 file that was produced in this lawsuit by the Groom</p> <p>21 Firm. Is that correct?</p> <p>22 A That's correct.</p> <p style="text-align: right;">Page 64</p>
<p>1 MR. DENNIE: No, I get the Bates</p> <p>2 label reference, but I'm just trying to make sure</p> <p>3 that I'm understanding where they came from.</p> <p>4 BY MR. DENNIE:</p> <p>5 Q So you're looking at Deposition</p> <p>6 Exhibit 11, which is an e-mail from Hannah Coffman</p> <p>7 to Michael Cloud on January 18, 2019. Is that</p> <p>8 right?</p> <p>9 A Yes, it is.</p> <p>10 Q And I will submit to you that there</p> <p>11 were records produced to Mr. Cloud on that date</p> <p>12 that were 860 pages of records. Were you involved</p> <p>13 in providing these records to the Groom Law Firm?</p> <p>14 A I don't recall if I assisted.</p> <p>15 Q Okay. I just wanted to make sure --</p> <p>16 I'm sorry, go ahead. I didn't mean to cut you off.</p> <p>17 A No, that's correct, I don't recall</p> <p>18 providing something here.</p> <p>19 Q I will apologize to you, Mr. Vincent,</p> <p>20 when we're wearing the masks it's a little bit</p> <p>21 easier for me to interrupt you because when you</p> <p>22 pause for a little longer than normal, I can't see</p> <p style="text-align: right;">Page 63</p>	<p>1 Q As it pertains to the 30(b)(6)</p> <p>2 questions, there was an exhibit that was compiled</p> <p>3 that contains notes, and potentially other</p> <p>4 documents, that you reviewed in preparation for</p> <p>5 answering the 30(b)(6) topics, correct?</p> <p>6 A Do you mind repeating that for me?</p> <p>7 Q Sure. No problem.</p> <p>8 As it pertains to that category</p> <p>9 number one that I mentioned, your review of the</p> <p>10 30(b)(6) topics, there's been a binder that was</p> <p>11 compiled that you reviewed to help you in</p> <p>12 preparation to answer the 30(b)(6) questions,</p> <p>13 correct?</p> <p>14 A Correct.</p> <p>15 Q In the administrative record, I just</p> <p>16 want to make sure that we're talking about the same</p> <p>17 thing and we're not speaking separately. If you</p> <p>18 will flip for Exhibit 7. I want you to let me know</p> <p>19 if Exhibit 7 is what you're referring as the</p> <p>20 administrative record.</p> <p>21 A Yes. This looks to be the</p> <p>22 administrative record, Exhibit 7.</p> <p style="text-align: right;">Page 65</p>

1 Q Okay. So Exhibit 7 is Bates labeled
2 CLOUD-AR-0001 through CLOUD-AR-529, correct?
3 A That is correct.
4 Q And that's -- when you refer to the
5 administrative record, Exhibit 7 is what you're
6 referring to, correct?
7 A That's correct.

Page 66

Page 68

Page 67

Page 69

18 (Pages 66 - 69)

8 Q Is it fair to say all of the
9 questions that were asked of the board members were
10 yes-or-no questions?
11 A Yes.

Page 78

22

Page 80

Page 79

Page 81

21 (Pages 78 - 81)

<p>Page 82</p>	<p>6 Q They didn't ask members of the board 7 whether they reviewed the decision letter before it 8 went sent out. Is that right? 9 A That was not a line of questions, no. 10 Q You didn't ask the board whether they 11 provided any input on the decision letter, right? 12 A That's correct, we didn't ask that 13 question in this line of questioning. 14 Q You didn't ask if the board made any 15 changes to the decision letter, right? 16 A We did not ask that question, no.</p> <p>Page 84</p>
<p>Page 83</p>	<p>17 BY MR. DENNIE: 18 Q Go to Exhibit 6. 19 A I'm sorry. Can you repeat that? 20 Q Sure. Take a look at Exhibit 6. 21 A I have Exhibit 6. I have the 22 November 23, 2016 letter open.</p> <p>Page 85</p>

<p>1 Q Okay. This is the decision that was 2 sent out relating to Mr. Cloud's reclassification 3 appeal, correct? 4 A That is correct. 5 Q This is the decision made by the 6 board, correct? 7 A That is correct. 8 Q Have you seen any e-mails or 9 correspondence from any of the board members where 10 they provided any discussion or words to be 11 included in Deposition Exhibit 6? 12 A No, not that I'm aware of. 13 Q As you sit here today, you can't 14 confirm whether any members of the board actually 15 read this decision before it came out, correct? 16 A Before it was sent to Mr. Cloud? 17 Q Correct. 18 A That is correct, I can't confirm 19 that. 20 Q And you would agree that the Groom 21 Firm wrote this letter, right? 22 A They assisted the Plan office in</p> <p style="text-align: right;">Page 86</p>	<p>1 Q Okay. And Linda Johnston is just an 2 administrative assistant. She didn't provide any 3 of the language set forth in Deposition Exhibit 6, 4 did she? 5 A Not that I'm aware of, no. 6 Q Wasn't it the practice in these 7 applications for disability benefits that the Groom 8 Firm would prepare the decision without 9 communicating with the members of the committee? 10 MR. MEEHAN: Objection. No 11 foundation. 12 Go ahead. 13 THE WITNESS: Well, we have -- we're 14 not talking about Exhibit 6 anymore? 15 BY MR. DENNIE: 16 Q I'm going to -- just follow my 17 question -- my first one is about the committee. 18 So I'll ask it again. 19 As it pertains to decisions for 20 disability benefits that are decided by the 21 committee, the Groom Firm would prepare those 22 written letters without communication with members</p> <p style="text-align: right;">Page 88</p>
<p>1 writing the decision letter. 2 Q Okay. Tell me who else helped write 3 this letter. If they assisted, tell me who else 4 wrote it. 5 A When we received the letter, 6 administration will format the letter, make sure 7 everything is correct and then send it out to the 8 player. 9 Q Who did that for Mr. Cloud's, as it 10 pertains to Deposition Exhibit 6? 11 A I wouldn't be able to say for sure, 12 but it may have been Belinda Johnston at the Plan 13 office or executive admin. 14 Q Linda what? 15 A Johnston, J-O-H-N-S-T-O-N. 16 Q Okay. And you said Linda Johnston is 17 the administrative assistant? 18 A Yes. Yes, sir. 19 Q You would agree from your experience 20 working with lawyers that Deposition Exhibit 6 is 21 clearly prepared by a lawyer, correct? 22 A Correct.</p> <p style="text-align: right;">Page 87</p>	<p>1 of the committee, correct? 2 A The committee would make a decision 3 and then the decision letters would be created. 4 Q So my question is little bit 5 different. But I appreciate your response. It's a 6 little bit differ, so follow me for a second. 7 The committee makes a decision, 8 right? 9 A Yes. 10 Q The Groom Firm writes that decision 11 and puts it into a decision letter, correct? 12 MR. MEEHAN: Objection to the form. 13 Asked and answered. 14 Go ahead. 15 THE WITNESS: Correct. 16 BY MR. DENNIE:</p> <p style="text-align: right;">Page 89</p>

1 You don't have any information or
2 evidence that shows that the members of the board
3 actually reviewed a decision before it was sent to
4 a player, correct?

5 A I don't have any information that
6 they reviewed the letter before it went to the
7 player, that's correct.

8 Q And you don't have any information or
9 evidence that shows that the board actually made
10 any additions or changes to a decision letter
11 before it was sent to a player, correct?

12 A That's correct.

Page 90

Page 92

5 Q So you would agree that a decision is
6 made by the board, right?

7 A That's correct.

8 Q Again, the Groom Firm would write
9 that decision, correct?

10 A Correct.

n.

Page 91

21 Q Where is the board-level decision
22 provided?

Page 93

1 A At the meeting itself, the final
2 decision is made.

3 Q Is there any e-Ballot that's
4 conducted by the board?

5 A It's in the minutes by the board for
6 their decision.

Page 94

Page 96

7 Q Okay. So if we flip to
8 CLOUD-MIN-006, and I'll just read it to you, so
9 tell me if I'm wrong. It says, "To: Michael
10 Cloud. On review of appeal from earlier decision
11 to award Inactive A total permanent disability
12 benefits, effective May 1, 2014, denied application
13 for reclassification to the Active Football
14 category failure to meet the requirement for Plan
15 section 5.7(b)."

16 Did I read that correctly?

17 A Yes, you did.

Page 95

Page 97

25 (Pages 94 - 97)

	<p>13 BY MR. DENNIE:</p> <p>14 Q As it pertains to Exhibit 19 and</p> <p>15 those questions, when you were listening to the</p> <p>16 questions being asked by the Groom Firm, was there</p> <p>17 ever any discussion about whether the board</p> <p>18 discussed Mr. Cloud's application prior to casting</p> <p>19 their vote?</p> <p>20 A We did not ask that line of</p> <p>21 questioning. There was no response like that.</p> <p>Page 98</p> <p>Page 100</p>
<p>1</p> <p>Page 99</p>	<p>Page 101</p>

<p>2 Q And I take it, from looking at</p> <p>3 Deposition Exhibit 19, there was no question asked</p> <p>4 of the board members specifically what the</p> <p>5 information they gave to the benefits office about</p> <p>6 Mr. Cloud's case prior to the drafting of this</p> <p>7 letter. Is that correct?</p> <p>8 A That's correct, that question was not</p> <p>9 asked.</p> <p>10 Q And correct me if I'm wrong, but</p> <p>11 there's also no information or -- requested from</p> <p>12 any of the board members in the conversations that</p> <p>13 were had yesterday where they were asked any input</p> <p>14 that was requested of them by the Groom Firm prior</p> <p>15 to the drafting of Deposition Exhibit 6. Is that</p> <p>16 right?</p> <p>17 A Yes, that question was not asked.</p>	

Page 102

Page 104

Page 103

Page 105

27 (Pages 102 - 105)

	<p>13 Q You testified, and correct me if I'm</p> <p>14 wrong, but there's no evidence or information that</p> <p>15 the board actually reviewed Exhibit 6 before it was</p> <p>16 sent out, right?</p> <p>17 A That is my understanding, yes.</p> <p>18 Q And you would agree that</p> <p>19 Ms. Blackburn and Mr. Cass both have legal</p> <p>20 training. Is that right?</p> <p>21 A That's my understanding, yes.</p> <p>Page 106</p>
	<p>Page 108</p> <p>Page 107</p> <p>Page 109</p>

<p>22</p>	<p>?</p> <p>11 Q So let me ask you a couple of</p> <p>12 questions and you tell me if I'm wrong.</p> <p>13 Earlier you testified you were not</p> <p>14 aware of the board ever reviewing Exhibit 6 before</p> <p>15 it was sent to Mr. Cloud, correct?</p> <p>16 A That's correct.</p> <p>Page 110</p>
<p>Page 111</p>	<p>2 Are you aware or have any evidence</p> <p>3 that the board reviewed exhibit -- I just butchered</p> <p>4 my words. Let me try it again.</p> <p>5 Are you aware or have any evidence</p> <p>6 that shows that the board reviewed Exhibit 6 after</p> <p>7 it was sent out?</p> <p>8 A I do not have that evidence, no.</p> <p>Page 113</p>

29 (Pages 110 - 113)

<p>1</p> <p>7 Q Let's go one by one.</p> <p>8 As it pertains to requests to receive</p> <p>9 Active A football benefits, do you know the numbers</p> <p>10 that was granted versus the ones that were denied?</p> <p>11 A I do not know the numbers denied.</p> <p>12 And I can tell you based off of March 2021, how</p> <p>13 many players are receiving Active football.</p>	

Page 118

Page 120

Page 119

Page 121

31 (Pages 118 - 121)

<p>14 Q Thirty-two players are receiving how 15 many requests for Active A benefits have been 16 denied? 17 A I don't know have that answer. 18 Football --</p> <p>Page 122</p>	<p>20 Q Are there any spreadsheets or other 21 data that you all keep on total and permanent 22 disability claims that have been granted or denied?</p> <p>Page 124</p>
<p>Page 123</p>	<p>1 A Historically, there is a database 2 that keeps track of a case as it goes through. And 3 then once a decision is made, approval or denial, 4 that's acknowledged, it would have to be a -- it's 5 considered a data dump onto a chart and then it has 6 to be configured to provide that type information. 7 A database has not existed for forever -- 8 Q So there is a data -- I'm sorry. Go 9 ahead. 10 A I mean if you're looking for from the 11 inception of T&P, I wouldn't say that that sort of 12 database exists. The database is relatively newer 13 in the sense that since it's after 2000 -- I 14 wouldn't even be able to say the exact year, but 15 it's after 2010, well after 2010. 16 Q Okay. So sometime after 2010, a 17 database was created that would show the number of 18 claims that are granted and the number of claims 19 that are denied for total and permanent benefits, 20 correct? 21 A Yes, if you download the data, that 22 should be retrievable.</p> <p>Page 125</p>

<p>1 Q And that's a document that can be</p> <p>2 easily produced in a lawsuit, correct?</p> <p>3 MR. MEEHAN: Well, Objection to form.</p> <p>4 Can you explain that again,</p> <p>5 Mr. Vincent.</p> <p>6 THE WITNESS: Yes.</p> <p>7 So I wouldn't be able to do it</p> <p>8 right now. For example, we would have to go</p> <p>9 into the database, look at the fields to</p> <p>10 determine, you know, what the request is. And</p> <p>11 then from there, it would go into a massive Excel</p> <p>12 sheet and then it would have to be filtered, for</p> <p>13 example, approvals and denials. But that would</p> <p>14 be a method to kind of get it at the end, to have</p> <p>15 an overall scope.</p> <p>16 BY MR. DENNIE:</p> <p>17 Q But you could run a query in your</p> <p>18 database and retrieve the requested information,</p> <p>19 correct?</p> <p>20 MR. MEEHAN: Objection to the form.</p> <p>21 THE WITNESS: We should be able to</p> <p>22 run a query to get that type of information.</p> <p style="text-align: right;">Page 126</p>	<p>1 and capricious. And I don't know why we're still</p> <p>2 fighting that. It's the same request that we</p> <p>3 talked about with the director's report and the</p> <p>4 counsel report. The reason we don't know about</p> <p>5 this stuff is because you're not giving us</p> <p>6 information that's being requested.</p> <p>7 So you have the data, so you've got</p> <p>8 to give the data. I mean, here we are in</p> <p>9 discovery depositions two weeks before the</p> <p>10 discovery deadline expires and I'm learning about</p> <p>11 records for the first time. I just ask you to</p> <p>12 meet your duty under the rule.</p> <p>13 We'll have to add that to our</p> <p>14 motion to compel. This is our conferring 37, 57,</p> <p>15 and 58 of the request. If you have responsive</p> <p>16 information, you need to produce it. You can get</p> <p>17 back to me about when it's going to be produced.</p> <p>18 We've requested the director's and counsel report</p> <p>19 prior to this deposition. It was not provided,</p> <p>20 so we're apparently going to have to demand and</p> <p>21 request more stuff. But you can get back to me.</p> <p>22 MR. MEEHAN: Okay. Since you want to</p> <p style="text-align: right;">Page 128</p>
<p>1 MR. DENNIE: Counsel, was that</p> <p>2 something that you guys can produce? That's the</p> <p>3 first time that we heard that, too.</p> <p>4 MR. MEEHAN: Well, as you know, we</p> <p>5 think that has nothing whatsoever to do this</p> <p>6 lawsuit, so you can send a request for it and we</p> <p>7 will take it under advisement and we'll try to meet</p> <p>8 and confer with you but as I understand --</p> <p>9 MR. DENNIE: We already have.</p> <p>10 MR. MEEHAN: It's no -- there's been</p> <p>11 no meeting and conferring on that topic. As you</p> <p>12 just said, that came up a moment ago. That's brand</p> <p>13 new. We've had no discussion on it at all. But as</p> <p>14 I understand the witness, he is talking about it is</p> <p>15 a process that he could follow to create something.</p> <p>16 And that sounds like a lot of work to me. So I</p> <p>17 will have to get a better understanding from the</p> <p>18 witness. And I would like to have that</p> <p>19 understanding from you off this record as to what</p> <p>20 the relevance to this case it could possibly have.</p> <p>21 So that's a discussion that we would need to have.</p> <p>22 MR. DENNIE: As you know, arbitrary</p> <p style="text-align: right;">Page 127</p>	<p>1 put it on the record, I'll just say briefly what</p> <p>2 took place just now is not a meet and confer. I do</p> <p>3 not know whether production of that information is</p> <p>4 something that will take five minutes or five</p> <p>5 years. I have no insight on it. Now is not the</p> <p>6 time for me to have that discussion with</p> <p>7 Mr. Vincent.</p> <p>8 The director's and counsel reports,</p> <p>9 we had no meet and confer of any nature. You</p> <p>10 made your request, we've communicated that we</p> <p>11 would get back to you. You filed a motion with</p> <p>12 no meet and confer on that topic. I don't want</p> <p>13 to belabor this deposition. We're not going to</p> <p>14 agree right now.</p> <p>15 MR. DENNIE: What are you talking</p> <p>16 about?</p> <p>17 MR. MEEHAN: I do not wish to belabor</p> <p>18 this --</p> <p>19 MR. DENNIE: We talked about it on</p> <p>20 the 5th.</p> <p>21 MR. MEEHAN: -- deposition -- we did</p> <p>22 not.</p> <p style="text-align: right;">Page 129</p>

<p>1 MR. DENNIE: Anyway, it doesn't</p> <p>2 matter. Let's move on.</p> <p>3 MR. MEEHAN: No, sir.</p> <p>4 MR. DENNIE: We are wasting time. I</p> <p>5 don't want to hear that.</p> <p>6 MR. MEEHAN: Sir --</p> <p>7 BY MR. DENNIE:</p> <p>8 Q Mr. Vincent, how long would it take</p> <p>9 you to run that database query?</p> <p>10 MR. MEEHAN: Sir, he is not going to</p> <p>11 answer that question until I finish my statement.</p> <p>12 Please don't interpret me.</p> <p>13 I have said several times I do not</p> <p>14 wish to belabor this deposition. We need to meet</p> <p>15 and confer. If you wish to ask him questions</p> <p>16 now, go right ahead. But we have tried to work</p> <p>17 with you and you have never stated, to my</p> <p>18 understanding, why it is relevant to know that</p> <p>19 the --</p> <p>20 MR. DENNIE: I just told you it's not</p> <p>21 arbitrary and capricious as the application. And</p> <p>22 that is an absolute easy one. So okay, that's</p> <p style="text-align: right;">Page 130</p>	<p>1 Do your best, sir.</p> <p>2 THE WITNESS: If there's a time</p> <p>3 period provided, you would have to download the</p> <p>4 information, it goes on through the Excel sheet.</p> <p>5 And then have to filter out of cases by player.</p> <p>6 And then, you know, you have to audit to make sure</p> <p>7 that the correct information was provided. It</p> <p>8 would take time. It would not be -- I wouldn't do</p> <p>9 it right now and give it to you right now, if</p> <p>10 that's the question.</p> <p>11 BY MR. DENNIE:</p> <p>12 Q That is not my question.</p> <p>13 A No.</p> <p>14 Q I just want to know in your</p> <p>15 experience what time would it take. So let me go</p> <p>16 back a step. And maybe I misunderstood what you</p> <p>17 your response was.</p> <p>18 So was this database created in 2010</p> <p>19 for all claims that have ever been filed or are</p> <p>20 they only claims going forward from 2010-ish?</p> <p>21 A Going forward. I would be more</p> <p>22 comfortable saying around 2011 to 2013, just as a</p> <p style="text-align: right;">Page 132</p>
<p>1 fine. We'll move on. If you don't want to produce</p> <p>2 the record, we'll take that up with the Court. We</p> <p>3 talked about the other one at least four times.</p> <p>4 BY MR. DENNIE:</p> <p>5 Q Mr. Vincent --</p> <p>6 MR. MEEHAN: Mr. Dennie, I am not</p> <p>7 refusing anything. I am saying to you --</p> <p>8 MR. DENNIE: Please stop.</p> <p>9 MR. MEEHAN: I am saying to you we</p> <p>10 have not met and conferred. Now, go ahead with</p> <p>11 your deposition. And we do whatever is</p> <p>12 appropriate. Please proceed.</p> <p>13 BY MR. DENNIE:</p> <p>14 Q How long would it take to run the</p> <p>15 query to determine the total and permanent</p> <p>16 disability benefits that have been granted or</p> <p>17 denied?</p> <p>18 MR. MEEHAN: From what time period?</p> <p>19 BY MR. DENNIE:</p> <p>20 Q Answer the question.</p> <p>21 MR. MEEHAN: Objection to the form.</p> <p>22 Time period is ambiguous.</p> <p style="text-align: right;">Page 131</p>	<p>1 note. But yes, it is for claims from the time the</p> <p>2 system was created forward.</p> <p>3 Q Okay. So the time period we're</p> <p>4 talking about is somewhere after 2010, maybe 2011,</p> <p>5 maybe 2012. Is that correct?</p> <p>6 A Yes. It was a system change, and</p> <p>7 then we started putting information into that</p> <p>8 system as the case went on.</p> <p>9 Q Okay. So you understood that when</p> <p>10 I'm asking you questions, it's from the date the</p> <p>11 system was created to present, correct?</p> <p>12 A Correct.</p> <p>13 Q Okay. So with that in mind, whenever</p> <p>14 the system was created, whether it was '11, '12,</p> <p>15 whenever, to the present, running the query to</p> <p>16 determine what total and permanent benefits have</p> <p>17 been granted and denied, how long would that take?</p> <p>18 A I would need several days just to</p> <p>19 make sure it's correct information that's given to</p> <p>20 you.</p> <p>21 Q Several days to run a database query</p> <p>22 that's prepared on an Excel spreadsheet?</p> <p style="text-align: right;">Page 133</p>

<p>1 A I just want to make sure --</p> <p>2 MR. MEEHAN: Objection to the form.</p> <p>3 Misstates his testimony. And, Mr. Dennie, I know</p> <p>4 you don't realize it, but your tone has changed</p> <p>5 markedly. So please show respect in your tone, not</p> <p>6 just on the written transcript. Thank you.</p> <p>7 MR. DENNIE: Okay. Please stop.</p> <p>8 That's not an objection. I'm just asking the guy a</p> <p>9 question. Please stop trying to make me look bad</p> <p>10 on the transcript for no reason.</p> <p>11 BY MR. DENNIE:</p> <p>12 Q Sir, I am just trying to get an</p> <p>13 understanding. I've run many -- when I worked on</p> <p>14 college campuses, I ran many queries that are</p> <p>15 similar to what you're talking about that has a lot</p> <p>16 of information and it certainly never took days.</p> <p>17 So I'm just trying to get an understanding for why</p> <p>18 you think that it would take days to run a query to</p> <p>19 determine whether T&P benefits applications were</p> <p>20 grant or denied.</p> <p>21 A The system uses players by</p> <p>22 application types under one umbrella. So if</p> <p style="text-align: right;">Page 134</p>	<p style="text-align: right;">Page 136</p>
<p>1 someone applied for line of duty and T&P, for</p> <p>2 example, we would have to tease that out. That's</p> <p>3 where some of the extra work comes in. It's not,</p> <p>4 you know, John Smith applies for line of duty and</p> <p>5 John Smith applied for T&P, then we have just the</p> <p>6 T&P that goes forward, for example, we would have</p> <p>7 to do a little teasing out to make sure that we</p> <p>8 give the correct information. That's where it</p> <p>9 would just take some time, just making sure that</p> <p>10 you have the right information.</p> <p>11 Q How many T&P benefits applications</p> <p>12 have been filed since the database was created?</p> <p>13 A I don't have that answer.</p> <p>14 Q Give me an estimate.</p> <p>15 A I'm not sure honestly. No idea.</p> <p>16 Easily hundreds, I mean it's not thousands, since</p> <p>17 the inception.</p> <p>18 Q Okay. So there have been hundreds of</p> <p>19 applications, not thousands, that has been filed</p> <p>20 since the database has began, correct?</p> <p style="text-align: right;">Page 135</p>	<p style="text-align: right;">Page 137</p>

14 Q And as we sit here today, you can't
15 tell me how many claims that were Active A benefits
16 have been denied. Is that correct?

17 A That's correct, I cannot give you the
18 decisions on Active -- well, let's just say total
19 and permanent disability as a whole, since the
20 category is determined by the committee or the
21 board.

Page 138

18 Q Can you tell me how many claims for
19 Inactive A benefits have been denied?

20 A I do not have that answer, no.

Page 140

Page 139

Page 141

36 (Pages 138 - 141)

<p>3 Is there a query that can be run to</p> <p>4 determine whether Inactive A benefits have been</p> <p>5 granted?</p> <p>6 A Yes, there would be a category under</p> <p>7 total and permanent disability.</p> <p>8 Q So in the query in the database, you</p> <p>9 could take a determination if the player received</p> <p>10 Inactive A or Active football benefits, correct?</p> <p>11 A Yes.</p> <p>Page 142</p>	<p>Page 144</p>
<p>?</p> <p>Page 143</p>	<p>19 Q So the number of reclassification</p> <p>20 requests from Inactive A to Active football</p> <p>21 benefits is not a large number, correct?</p> <p>22 A I would agree with that, yes.</p> <p>Page 145</p>

15 Q There's not a lot of requests out
16 there, as you've acknowledged, so it's not going to
17 be as a voluminous review of documentation to come
18 up with how many reclassification decisions for T&P
19 benefits have been granted or denied. Is that
20 right?

21 A That would be a fair statement. It
22 could be 10, 15, it could be less than a hundred,

Page 146

Page 148

1 but it would -- but I don't want to give a
2 definitive number of how many there were. It's
3 been a some time.

t?

Page 147

Page 149

38 (Pages 146 - 149)

<p>4 Q Do you know whether more benefits 5 applications under the T&P umbrella are granted or 6 denied? 7 A I wouldn't be able to confirm that 8 right now.</p> <p>21 Q The only way for us to get those is 22 going to be through that database that you talked</p> <p style="text-align: right;">Page 158</p>	<p>1 reclassifications appeals have been granted? 2 A I do not know that answer. 3 Q Who are the beneficiaries under the 4 Plan? 5 A Who are the beneficiaries? The 6 players.</p> <p style="text-align: right;">, Page 160</p>
<p>1 about before, correct? 2 MR. MEEHAN: Objection. No 3 foundation. 4 THE WITNESS: That would be 5 information in that database.</p> <p>13 As we sit here today, you can't tell 14 me whether T&P benefits applications are granted or 15 denied two to one, three to one, four to one, five 16 to one? You have no clue. Is that right? 17 A That's correct. 18 Q Do you know how many of the T&P 19 reclassifications benefits appeals have been 20 granted? 21 A I cannot confirm that either. 22 Q Do you know a percentage of the T&P</p> <p style="text-align: right;">Page 159</p>	<p style="text-align: right;">Page 161</p>

<p>10 Q Okay. So you would agree that the 11 players are the beneficiaries under the Plan, 12 right? 13 A Yes. 14 Q Who are the fiduciaries of the Plan? 15 A Trustees. 16 Q Who are the trustees? 17 A At the time of Michael Cloud's case; 18 Katie Blackburn, Ted Philips, Dick Cass, Jeff Van 19 Note, Robert Smith. Who am I forgetting here? 20 Q Sam McCullum? 21 A Sam McCullum. I apologize. Yes. 22 Q So the board members are who you're</p> <p>Page 162</p>	<p>Page 164</p>
<p>1 referring to as the trustees, correct? 2 A Yes, sir.</p> <p>13 Do the board members have a fiduciary 14 role or relationship to the players? 15 A They have a fiduciary role, yes.</p> <p>22</p> <p>Page 163</p>	<p>Page 165</p>

Page 166

Page 168

7 Q Would you agree that they have a
8 fiduciary role and the best interest of the
9 players?
10 A Yes.

Page 169

43 (Pages 166 - 169)

<p>7 Q Of the Active football benefits that</p> <p>8 have been provided, how many of those are related</p> <p>9 to concussion symptoms or syndrome?</p> <p>10 A I don't have an answer to that at</p> <p>11 all.</p> <p>--</p> <p>22 during the quarterly board meeting, there's</p> <p style="text-align: right;">Page 170</p>	<p>1 have been?</p> <p>2 A Maybe with the director of plan book.</p> <p>3 It goes over the amounts, it may have been the</p> <p>4 retirement board discussion. I couldn't confirm</p> <p>5 where that discussion, what happens. But that's --</p> <p>6 Q So let me -- I didn't really hear the</p> <p>7 first part. You said something about a director's</p> <p>8 plan or something to that effect. What is that?</p> <p>9 A Well, when the director of the Plan</p> <p>10 Benefit Office reports on the allocation of money</p> <p>11 that goes out on disability, it is acknowledged who</p> <p>12 is receiving the benefit -- I'm sorry, the number</p> <p>13 of players receiving a certain benefit and which</p> <p>14 ones.</p> <p>15 Q Okay. And for some reason I'm having</p> <p>16 a little more trouble hearing you right now, so, I</p> <p>17 mean, if you could speak up a little bit.</p> <p>18 A Yeah.</p> <p>19 Q And let me tell you what I heard and</p> <p>20 tell me if I'm wrong. Did you say that that's</p> <p>21 something that the director of the Plan stands up</p> <p>22 and says or is that a document that's presented?</p> <p style="text-align: right;">Page 172</p>
<p>1 acknowledgment of how many players are receiving a</p> <p>2 benefit and which ones at that time.</p> <p>3 Q Would that be in the minutes?</p> <p>4 A Would it be in the minutes? I can't</p> <p>5 confirm that. I believe it would be but...</p> <p>6 Q Okay. If you'll flip to Exhibit 12.</p> <p>7 A Okay.</p> <p>8 Q Do you see that indicated anywhere?</p> <p>9 MR. MEEHAN: Hang on one second. He</p> <p>10 needs to get the exhibit binder.</p> <p>11 MR. DENNIE: Okay.</p> <p>12 MR. MEEHAN: It's just a little</p> <p>13 further down the table.</p> <p>14 THE WITNESS: Thank you.</p> <p>15 MR. MEEHAN: Okay. He's got it.</p> <p>16 THE WITNESS: No, that is not in the</p> <p>17 minutes provided to you -- or by you, I should say.</p> <p>18 BY MR. DENNIE:</p> <p>19 Q Those were provided to me, not by me,</p> <p>20 just so we're clear.</p> <p>21 A Okay.</p> <p>22 Q So where in the minutes should that</p> <p style="text-align: right;">Page 171</p>	<p>1 That's why where I didn't hear you.</p> <p>2 A Both. There is a document that has</p> <p>3 the amounts, the number of players, and it's also</p> <p>4 expressed during the meeting itself.</p> <p>5 Q Is that the director's report?</p> <p>6 A Yes. Sorry if I called it director's</p> <p>7 plan.</p> <p>8 Q So the director's -- I'm sorry. I</p> <p>9 cut you off. Can you say that again?</p> <p>10 A Yeah. I called it the director plan</p> <p>11 book. It would be the director's report.</p> <p>12 Q Okay. So when you say director's</p> <p>13 plan book and director's report, those are the same</p> <p>14 thing, correct?</p> <p>15 A Yes, plan director's report.</p> <p>16 Q If I heard you correctly, those are</p> <p>17 prepared quarterly for the board meeting. Is that</p> <p>18 right?</p> <p>19 A That's correct.</p> <p style="text-align: right;">Page 173</p>

16 You would agree that there are
17 executive sessions that the board of directors hold
18 to discuss disability applications. Is that right?

19 A Yes. I would say the Players
20 Association meets with themselves, as would council
21 meets with themselves to discuss cases.

22 Q Did you ask any of the members of the

Page 182

Page 184

1 board about any executive decisions they held as it
2 pertains to Mr. Cloud's application?

3 A I did not. And I do not recall

Page 183

Page 185

47 (Pages 182 - 185)

1	<p data-bbox="769 974 850 999">Page 226</p> <p data-bbox="1386 974 1468 999">Page 228</p> <p data-bbox="769 1871 850 1896">Page 227</p> <p data-bbox="1386 1871 1468 1896">Page 229</p> <p data-bbox="867 1572 1435 1871">15 Q You would agree that the Plan office 16 directed Mr. Cloud to see Dr. Mandelbaum, correct? 17 A For his line of duty examination, 18 yes, sir. 19 Q So if your counsel e-mailed me and 20 said that Mr. Cloud was directed to Dr. Mandelbaum 21 by someone other than the Plan, that would be 22 incorrect, right?</p>

58 (Pages 226 - 229)

1 A Correct, Rose Mary Eves was a Plan
2 coordinator -- I'm sorry, worked with the Plan
3 office to schedule examinations.

4 Q You would agree that Mr. Cloud is
5 entitled to any records from his evaluation from
6 Dr. Mandelbaum, correct?

7 A Yes, sir.

Page 230

Page 232

Page 231

Page 233

59 (Pages 230 - 233)

<p>9 What are the sources of medical</p> <p>10 records for players who are submitting applications</p> <p>11 for disability benefits?</p> <p>12 A Multiple sources. If the player has</p> <p>13 his own personal physicians, they can submit those</p> <p>14 records any time after football -- before football.</p> <p>15 And when I say "football," I'm talking about NFL.</p> <p>16 And any other CFL, anything like that, they can</p> <p>17 submit those records. When it comes to NFL, the</p> <p>18 player can contact the last club that they played</p> <p>19 for and they should have their most recent team</p> <p>20 records, as we've been calling them, team records.</p> <p>21 Q What else?</p> <p>22 A There is a repository, from my</p> <p style="text-align: right;">Page 234</p>	<p style="text-align: right;">Page 236</p>
<p>1 understanding, I believe it's called EMR</p> <p>2 repository. That came into play after the 2011</p> <p>3 CBA. And from my understanding, the players would</p> <p>4 have had to have been playing in 2011 to be part of</p> <p>5 that system and forward.</p> <p>6</p> <p style="text-align: right;">Page 235</p>	<p style="text-align: right;">Page 237</p>

<p>Page 266</p>	<p>16 Q And you would agree that ERISA 17 requires the Plan to produce records in its 18 possession or control if requested by a player. Is 19 that right? 20 MR. MEEHAN: Objection. Calls for a 21 legal conclusion. 22 THE WITNESS: Yes, sir.</p> <p>Page 268</p>
<p>Page 267</p>	<p>1 MR. DENNIE: It's in his affidavit, 2 so I guess I could make the same objection. 3 BY MR. DENNIE: 4 Q You can answer. 5 A Yes, a request would be given -- if a 6 player requests his records and we have them on 7 file, we would hand them over. 8 Q And those requested records includes 9 records maintained by your Plan physicians, right? 10 A Yes, sir. 11 Q You would expect a player should have 12 access to all of the records from Plan physicians, 13 correct? 14 A Any record that we have on file, we 15 would hand over to the player, yes, sir.</p> <p>Page 269</p>

68 (Pages 266 - 269)

Page 270

Page 272 |

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3 Q Mr. Cloud requested his records.
4 Some of those were from Plan physicians. Those
5 scans and records were not produced, correct?

6 A Those x-ray films were not produced
7 for Mr. Cloud, that's correct.

8 Q They were produced for the first time
9 in July of 2021, right?

10 A Yes, sir.

16 Q Dr. Canizares had some films and
17 scans, right?

18 A Yes, from his 2011 evaluation, I
19 think.

Page 271

Page 273

Page 274

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Page 276

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15 You would agree that the Department
16 of Labor regulations require the Plan to turn over
17 medical documents that are requested by a player,
18 correct?

19 A Yes, sir.

Page 275

Page 277

70 (Pages 274 - 277)

<p>Page 290</p>	<p>16 Q Are you aware of any training, 17 whether you were there or not, where the board was 18 trained on the Plan document? 19 A I also cannot confirm.</p> <p>Page 292</p>
<p>Page 291</p>	<p>7 Q So my question was more -- the second 8 set of questions, and tell me if you didn't 9 understand it, but your awareness of whether you 10 were there or not, that the board was trained on 11 the Plan document? 12 A Am I aware if they were? I'm not 13 aware if they were or not.</p> <p>Page 293</p>

6 Q Are you aware of any training that
7 the board received pertaining to neurological
8 issues incurred by former NFL players?
9 A No, sir.

Page 294

Page 296

Page 295

Page 297

75 (Pages 294 - 297)

	<p>1 Q Just for clarity of the record, in</p> <p>2 2020, Inactive A benefits were 135,000, and the</p> <p>3 Active football benefit was 265,000. Is that</p> <p>4 correct?</p> <p>5 A Yes.</p> <p>6 Q What was the difference in the</p> <p>7 amounts of the Inactive A versus Active football</p> <p>8 benefits in 2019?</p> <p>9 A I believe they were the same amount,</p> <p>10 sir.</p> <p>11 Q So, again, that's 135,000 for</p> <p>12 Inactive A and 265,000 for Active football</p> <p>13 benefits?</p> <p>14 A Yes, sir.</p> <p>15 Q Same question for 2018.</p> <p>16 A Same response; 135 for Inactive A,</p> <p>17 and 265 for Active football.</p> <p>18 Q How about 2017?</p> <p>19 A Same response, sir.</p> <p>20 Q How about 2016?</p> <p>21 A I believe it was 120 -- 120,000 for</p> <p>22 Inactive A. And I don't recall the exact amount</p>	Page 318	Page 320
<p>12 Q Do you know what the difference</p> <p>13 between Inactive A and Active football benefits are</p> <p>14 from 2021?</p> <p>15 A Yes, sir.</p> <p>16 Q What's that amount?</p> <p>17 A Inactive A is 135,000 a year,</p> <p>18 Inactive football is 265,000 a year.</p> <p>19 Q What was the difference in the two</p> <p>20 amounts in 2020?</p> <p>21 A I believe they were the same amount,</p> <p>22 sir.</p>	<p>1 for Active football, I believe it was 250,000, sir,</p> <p>2 but I may be off.</p> <p>3 Q How about 2015?</p> <p>4 A It would have been the same as 2016.</p> <p>5 Q So that's 120 for Inactive A and</p> <p>6 250,000 for Active football benefit?</p> <p>7 A Yes.</p> <p>8 Q What about 2014?</p> <p>9 A Same amount, sir.</p> <p>10 Q And just so the record's clear, the</p> <p>11 amount would be 120,000 for Inactive A and 250,000</p> <p>12 for Active football benefits, correct?</p> <p>13 A Yes, sir.</p> <p>14 Q What about 2013?</p> <p>15 A I believe it's the same. But I'm</p> <p>16 starting to get into territory that I don't have</p> <p>17 the numbers in front of me, if there were any</p> <p>18 changes in 2011 CBA that changed the amounts and</p> <p>19 there was schedule for those amounts.</p> <p>20 Q Okay. So once we get below 2014,</p> <p>21 you're not certain what the difference between</p> <p>22 Inactive A and Active football benefits are. Is</p>	Page 319	Page 321

<p>1 that correct?</p> <p>2 A Right. I believe between 2011 and --</p> <p>3 between '11 and '15, it was the 120,000 and</p> <p>4 250,000, and then 2016 had the increase. Prior to</p> <p>5 2011, was a different CBA, and I don't recall those</p> <p>6 amounts, sir.</p> <p>7 Q So let me just make sure I have down</p> <p>8 what I think you're saying. So from 2011 to 2016,</p> <p>9 Inactive A benefit is 120,000 and Active football</p> <p>10 benefits was 250,000, correct?</p> <p>11 A I believe that is correct.</p> <p>12 Q From 2017 to present, Inactive A</p> <p>13 benefits is 135,000, and Active football benefits</p> <p>14 is 265,000, correct?</p> <p>15 A For the 2011 -- I believe it was</p> <p>16 between 2011 and 2015. In the 2016 year, is the</p> <p>17 change over increase. So 2016 to present is the</p> <p>18 135, 265 amounts.</p> <p>19 Q Okay. So let me go through it again.</p> <p>20 So from 2011 to 2015 --</p> <p>21 A Yes.</p> <p>22 Q -- the Inactive A benefit is 120,000</p> <p style="text-align: right;">Page 322</p>	<p style="text-align: right;">Page 324</p>
<p>1 and the Active football is 250,000, correct?</p> <p>2 A I believe so.</p> <p>3 Q So 2016 to present, the Inactive A</p> <p>4 benefit was 135,000, and the football Active</p> <p>5 football benefit was 265,000, correct?</p> <p>6 A Yes, sir.</p> <p>7 Q So if my math serves me correctly,</p> <p>8 the difference between the two from 2011 to 2021,</p> <p>9 is \$130,000, correct?</p> <p>10 A Yes, sir.</p> <p style="text-align: right;">Page 323</p>	<p style="text-align: right;">Page 325</p>

	<p>11 Q Okay. So what I just heard you say,</p> <p>12 you didn't come up with the definition of changed</p> <p>13 circumstances, correct?</p> <p>14 A That's correct, sir.</p> <p>15 Q You said the parties did, correct?</p> <p>16 A Yes, they interpret the Plan rules.</p> <p>17 Q Who from the parties sat down and</p> <p>18 came up with the definition of changed</p> <p>19 circumstances?</p> <p>20 A I'm not sure, sir.</p> <p>Page 334</p> <p>Page 336</p>
<p>7 BY MR. DENNIE:</p> <p>8 Q My question was not what you</p> <p>9 interpret the Plan to be saying. My question is:</p> <p>10 Is changed circumstance, as referenced in 5.7(b),</p> <p>11 defined anywhere in The Plan?</p> <p>12 A I do not see that in The Plan,</p> <p>Page 335</p>	<p>Page 337</p>

22

Page 338

Page 340

5 Q Would you agree that it's important
6 that the committee and board provide the same
7 definition of clear and convincing in all cases?

8 A Yes, it needs to be clear and
9 convincing.

10 Q Would you agree that it's important
11 that the committee and the board provide the same
12 definition of changed circumstance in all cases?

13 A Between the committee and the board,
14 they should agree.

15 Q So is that yes?

16 A Yes, sir.

Page 339

Page 341

86 (Pages 338 - 341)

Page 342	Page 344
Page 343	Page 345

1

9 BY MR. DENNIE:

10 Q So back to my question. Is there
11 anyone other than the Groom Law Firm who can answer
12 that question?

13 MR. MEEHAN: Objection to the form.

14 THE WITNESS: No, sir. I don't know
15 who you can ask.

20 Q Is there any location that you can
21 direct me to where there are written
22 interpretations of how the language in The Plan
Page 350

Page 352

1 documents have been applied?
2 A No, sir, I don't have anywhere to
3 point you to.

Page 351

Page 353

89 (Pages 350 - 353)

1	<p>13 BY MR. DENNIE:</p> <p>14 Q You're not aware of that circumstance</p> <p>15 because the letters are never submitted to the</p> <p>16 committee prior to being sent to the player,</p> <p>17 correct?</p> <p>18 A Correct, sir.</p>

14 Q And you testified earlier, and
15 correct me if I'm wrong, but a new concussion
16 symptom is a change in circumstance, correct?

17 MR. MEEHAN: Objection. Misstates
18 testimony.

19 THE WITNESS: It could be a change of
20 circumstances. It could.

Page 370

Page 372

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Page 371

Page 373

94 (Pages 370 - 373)

<p>17 BY MR. DENNIE:</p> <p>18 Q Well, I guess what I'm trying to</p> <p>19 understand, from the Plan perspective, you want the</p> <p>20 board and the committee to interpret those terms</p> <p>21 changed circumstance to mean the same thing, right?</p> <p>22 A Yes, that's what we would like.</p> <p style="text-align: right;">Page 374</p>	<p>20 Q Sure.</p> <p>21 Was the March 2nd, 2016 denial of</p> <p>22 reclassification provided to the committee prior to</p> <p style="text-align: right;">Page 376</p>
<p style="text-align: right;">Page 375</p>	<p>1 it being sent out?</p> <p>2 A I do not believe so, no.</p> <p>3 Q That's just not the policy of the</p> <p>4 Plan to give the people that decided the case the</p> <p>5 opportunity to read the written decision before</p> <p>6 it's sent to the player. Is that correct?</p> <p>7 A Yes.</p> <p>8 Q Flip over to Exhibit 6 for me.</p> <p>9 A November 23rd, 2016 letter.</p> <p>10 Q Is this the decision made by the</p> <p>11 board on Mr. Cloud's reclassification request?</p> <p>12 A Yes, sir.</p> <p>13 Q Do you know who wrote this letter?</p> <p>14 A I would say I believe this is drafted</p> <p>15 by Groom Law Group when it came to our Plan office.</p> <p>22 Q Was Exhibit 6 submitted to the board</p> <p style="text-align: right;">Page 377</p>

<p>1 for review prior to being sent to Mr. Cloud?</p> <p>2 A No, sir, I do not believe that was</p> <p>3 the case.</p> <p>Page 378</p>	<p>Page 380</p>
<p>1</p> <p>Page 379</p>	<p>1 BY MR. DENNIE:</p> <p>2 Q My question was not about the Groom</p> <p>3 Law Firm being present at that meeting.</p> <p>4 My question to you was, whether you</p> <p>5 were aware of any notes being provided to the Groom</p> <p>6 Law Firm by the board members to help draft this</p> <p>7 letter that's marked Exhibit 16?</p> <p>8 A No, I'm not aware of any notes</p> <p>9 provided to the Groom Law Group.</p> <p>10 Q Are you aware of any conversations</p> <p>11 that the board members had with the Groom Law Firm</p> <p>12 to help them draft this letter that's marked as</p> <p>13 Exhibit 6?</p> <p>14 MR. MEEHAN: Objection. Asked and</p> <p>15 answered.</p> <p>16 THE WITNESS: No, sir, I'm not.</p> <p>17 BY MR. DENNIE:</p> <p>18 Q Have you reviewed this letter</p> <p>19 thoroughly?</p> <p>20 A I looked at it for this deposition,</p> <p>21 sir.</p> <p>22 Q So obviously I haven't deposed the</p> <p>Page 381</p>

<p>1 180-day stops when the committee receives -- let me</p> <p>2 ask it again.</p> <p>3 12.6(a) does not say that it has to</p> <p>4 be received by the Plan office on day 180, correct?</p> <p>5 MR. MEEHAN: Objection. Calls for a</p> <p>6 legal conclusion.</p> <p>7 THE WITNESS: I would say the</p> <p>8 claimant has 180 days from the time they receive</p> <p>9 their decision to file an appeal.</p> <p>10 BY MR. DENNIE:</p> <p>Page 386</p>	<p>1</p> <p>21 Q Wouldn't it start from the day</p> <p>22 following --</p> <p>Page 388</p>
<p>Page 387</p>	<p>1 A No, sir.</p> <p>2 Q -- like every other computation of</p> <p>3 dates that's used in the world?</p> <p>4 MR. MEEHAN: Objection. No</p> <p>5 foundation.</p> <p>6 THE WITNESS: From the day of</p> <p>7 receipt. As written in the Plan language,</p> <p>8 "Claimant will have 180 days from the receipt of an</p> <p>9 adverse determination."</p> <p>10 BY MR. DENNIE:</p> <p>Page 389</p>

	<p>1</p> <p>11 BY MR. DENNIE:</p> <p>12 Q Okay. I just want to be clear. I'm</p> <p>13 not -- I understand you're saying this is what the</p> <p>14 document is. But I'm saying, do you have a</p> <p>15 document showing Mr. Cloud's signature stating he</p> <p>16 received that record on March 4th?</p> <p>17 A I do not have that, sir. I don't</p> <p>18 have a picture of his signature, sir.</p> <p>19 Q Is that a document that you could</p> <p>20 obtain?</p> <p>21 A Honestly, I don't believe so, sir.</p> <p>22 FedEx does not keep records that long. I don't</p> <p>Page 390 Page 392</p>
	<p>1 know how to retrieve a record that old.</p> <p>Page 391 Page 393</p>

	<p>12 Q Okay. Can you tell me why Elise</p> <p>13 Richard of the Plan is communicating with members</p> <p>14 of the Groom Firm about Mr. Cloud's application in</p> <p>15 2016?</p> <p>16 A This would be part of his appeal, as</p> <p>17 I understand it. Groom Law Group was creating</p> <p>18 appeal summaries, and in this moment when</p> <p>19 Mr. Cloud -- I'm sorry, Mr. Cloud acknowledged</p> <p>20 sending in documents with his appeal, those</p> <p>21 documents seemed to be missing. So I understand</p> <p>22 that Elise and Natallia went back to Mr. Cloud</p> <p>Page 402 Page 404</p>
<p>1</p> <p>Page 403</p>	<p>1 asking, "Are there documents you wish to submit</p> <p>2 with your appeal?"</p> <p>3</p> <p>Page 405</p>

APPENDIX 2

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION

MICHAEL CLOUD, :
 :
Plaintiff, :
 : Civil Action No.:
vs. :
 : 3:20-CV-01277-E
THE BERT BELL/PETE ROZELLE :
NFL PLAYER RETIREMENT PLAN, :
 :
Defendant. :

DEPOSITION OF PATRICK C. REYNOLDS

DATE: August 4, 2021
TIME: 9:11 a.m. to 5:26 p.m.
LOCATION: Groom Law Group
1701 Pennsylvania Avenue
Suite 1200
Washington, D.C. 20006

REPORTED BY: Felicia A. Newland, CSR

Veritext Legal Solutions
1250 Eye Street, N.W., Suite 350
Washington, D.C. 20005

Page 26	Page 28
1	
Page 27	Page 29
	<p>16 Q Do you have any legal training?</p> <p>17 A I don't.</p> <p>18 Q Do you have any medical training?</p> <p>19 A No.</p>

8 (Pages 26 - 29)

			?
	Page 30		Page 32
		1	
13	Q	You don't have a legal license?	
14	A	I do not.	
15	Q	You don't have a medical license?	
16	A	No.	
	Page 31		Page 33

	<p data-bbox="1094 947 1110 968">?</p>
<p data-bbox="781 978 850 999">Page 74</p>	<p data-bbox="1401 978 1471 999">Page 76</p> <p data-bbox="878 1031 894 1052">1</p> <p data-bbox="878 1230 1455 1335">6 Q So you were consistently employed 7 with the NFL from 2009 until 2017, when you left to 8 go work for PRM Consulting, correct? 9 A Correct.</p> <p data-bbox="781 1871 850 1892">Page 75</p> <p data-bbox="1401 1871 1471 1892">Page 77</p>

20 (Pages 74 - 77)

1	<div>Page 86</div> <div>1</div> <div>11 Q In those documents that you have</div> <div>12 access to through this portal or website, have you</div> <div>13 ever seen any memos prepared by the Groom Law Firm?</div> <div>14 A I have.</div> <div>15 Q Okay. What is the nature and reason</div> <div>16 for the Groom Law Firm to prepare memos?</div> <div>17 A It's a summary of the case.</div> <div>Page 87</div>
	<div>S</div> <div>Page 88</div> <div>Page 89</div>

<p>1</p> <p>11 Q In your training to be on the</p> <p>12 committee, did you ever review any medical articles</p> <p>13 on concussions and associated head injuries?</p> <p>14 A I did not, no.</p> <p>15 Q In your training to be on the</p> <p>16 committee, did you ever review any orthopedic</p> <p>17 injuries that are commonly associated with NFL</p> <p>18 players?</p> <p>19 A Not that I can recall, no.</p> <p>Page 90</p>	<p>1</p> <p>Page 92</p>
<p>Page 91</p>	<p>1</p> <p>Page 93</p>

24 (Pages 90 - 93)

	<p>17 Q You don't review medical journal</p> <p>18 articles or other medical analysis for orthopedic</p> <p>19 injuries commonly associated with NFL players,</p> <p>20 correct?</p> <p>21 A Correct.</p> <p>Page 94</p>
<p>18 Q You have no legal training, correct?</p> <p>19 A I do not.</p> <p>20 Q You have no medical training,</p> <p>21 correct?</p> <p>22 A I do not.</p> <p>Page 95</p>	<p>Page 96</p> <p>Page 97</p>

25 (Pages 94 - 97)

<p>Page 98</p> <p>Page 99</p>	<p>Page 100</p> <p>21 Q So, I mean, is the answer that you</p> <p>22 haven't gathered any information on head injuries</p> <p>Page 101</p>

<p>1 incurred by players who have formerly played in the</p> <p>2 NFL?</p> <p>3 A Personally? No, I have not.</p> <p>4 Q You told me before you haven't</p> <p>5 received any training about head injuries incurred</p> <p>6 by players who had formerly played in the NFL,</p> <p>7 correct?</p> <p>8 A Correct.</p> <p>9 Q Have you read any white papers on</p> <p>10 head injuries incurred by players who have formerly</p> <p>11 played in the NFL?</p> <p>12 A I can't recall, no.</p> <p>13 Q I believe you testified before, but</p> <p>14 correct me if I'm wrong, because the language is</p> <p>15 little bit different, you haven't reviewed any</p> <p>16 studies performed as it relates to head injuries</p> <p>17 incurred by players who formerly played in the NFL,</p> <p>18 correct?</p> <p>19 A Not that I can recall, correct.</p> <p>20 Q Have you personally conducted any</p> <p>21 research on head injuries that were incurred by NFL</p> <p>22 players at any time?</p> <p>Page 102</p>	<p>1</p> <p>Page 104</p>
<p>1 A I have not.</p> <p>2</p> <p>8 Q You would agree that you held a</p> <p>9 pretty important role in determining whether</p> <p>10 someone was entitled to disability benefits based</p> <p>11 on head injuries, correct?</p> <p>12 A That's correct.</p> <p>Page 103</p>	<p>Page 105</p>

1	<p>9 Q Have you reviewed any studies on</p> <p>10 orthopedic injuries commonly incurred by players</p> <p>11 who played in the NFL?</p> <p>12 A Not that I can recall.</p> <p>13 Q Have you reviewed any white papers on</p> <p>14 orthopedic injuries that are commonly incurred by</p> <p>15 players who formerly played in the NFL?</p> <p>16 A Not that I can recall.</p> <p>17 Q Have you received any training on</p> <p>18 orthopedic injuries incurred by players who</p> <p>19 formerly played in the NFL?</p> <p>20 A Not that I can recall.</p> <p>Page 110</p>
1	<p>Page 112</p> <p>22</p> <p>Page 113</p>

<p>4 Q Were you on the committee</p> <p>5 consistently from sometime in 2013 until</p> <p>6 approximately January 2021?</p> <p>7 A Yes.</p> <p>8 Q During your time on the committee,</p> <p>9 with whom did you serve?</p> <p>10 A Chris Smith.</p> <p>11 Q Was Ms. Smith on the committee the</p> <p>12 entire time you were on the committee?</p> <p>13 A She was.</p>	<p>17 Q Who appointed you?</p> <p>18 A The Management Council of the NFL.</p> <p> ?</p>

30 (Pages 114 - 117)

9 Q You were appointed to serve on the
10 committee by the Management Council, correct?
11 A Correct.

Page 122

Page 124

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Page 123

Page 125

32 (Pages 122 - 125)

	<p>1 And you said the Player Benefits</p> <p>2 Office provides some statistics. Can you give me a</p> <p>3 better understanding of what that is?</p> <p>4 A So the report that I'm recalling has</p> <p>5 a pie chart with the amount of monies spent on</p> <p>6 pension, disability, the breakout of the different</p> <p>7 types of disability, number of claims processed,</p> <p>8 things of that nature.</p> <p>9 Q So you said that was in a form of a</p> <p>10 pie chart?</p> <p>11 A Yeah, that's the one I'm thinking of</p> <p>12 right now.</p> <p style="text-align: right;">Page 152</p>
<p>1</p> <p>10 A Not specifically, no. The Plan</p> <p>11 director, for example, has a report, which shows</p> <p>12 some statistics on a quarterly basis; monies spent,</p> <p>13 claims processed, things like that.</p> <p>14 Q When you say the director, who are</p> <p>15 you referencing specifically?</p> <p>16 A The current director is Mike Miller.</p> <p>17 Q What is Mike Miller's title</p> <p>18 specifically, if you know?</p> <p>19 A I believe he's director of --</p> <p>20 director of the Player Benefits Office. I don't</p> <p>21 know his specific title.</p> <p>22 Q Okay. Fair enough.</p> <p style="text-align: right;">Page 151</p>	<p>1</p> <p style="text-align: right;">Page 153</p>

<p>3 A They provide updates in their counsel</p> <p>4 report of any current or prior litigation, any</p> <p>5 updates to the Plan documents, any amendments that</p> <p>6 need to be made, any drafts of forms subject to</p> <p>7 party approval, things like that.</p> <p>8 Q So is it your understanding that the</p> <p>9 Groom Law Firm is who drafted the Plan document?</p> <p>10 A I believe that they were the primary</p> <p>11 drafter of the document, yes.</p> <p>Page 154</p>	<p>1</p> <p>Page 156</p>
<p>Page 155</p>	<p>1</p> <p>Page 157</p>

40 (Pages 154 - 157)

<p>3 Okay. Is there a repository of</p> <p>4 medical information that the NFL keeps on players?</p> <p>5 A Not that the NFL keeps, no. There is</p> <p>6 an electronic medical records site that players</p> <p>7 have access to, but that's outside of my knowledge.</p> <p>8 I -- I don't -- I don't think that the NFL</p> <p>9 maintains it necessarily.</p> <p>Page 158</p>	<p>12 Q You know there is a repository of</p> <p>13 information, correct?</p> <p>14 A That's correct.</p> <p>Page 160</p>
<p>2 Q And the reason that there is such a</p> <p>3 repository of information is so when a player goes</p> <p>4 from Team A to Team B, the records can be accessed</p> <p>5 and transferred easily, correct?</p> <p>6 A That seems to make sense, yes.</p> <p>7 Q And you said you worked with the NBA</p> <p>8 and the NHL. They have similar platforms, correct?</p> <p>9 A I don't know that.</p> <p>t. Page 159</p>	<p>Page 161</p>

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?

Page 166

22 retired players?

the NFL owes to players,

Page 168

1

6 Q But I believe you testified that a
7 decision would be rendered and sent via e-mail,
8 correct?

9 A Yes, that's correct.

17 Q As an employee of the NFL, do you
18 have any duty to retired players?

19 A As part of my job function?

20 Q Yes, sir.

21 A Yes.

Page 167

Page 169

3 Q Do you review the decision letter

4 before it's sent out?

5 A Typically, no.

Page 174

Page 176

1

Page 175

Page 177

45 (Pages 174 - 177)

9 Q Yeah.

10 So we've established that you're
11 aware that there's a medical repository of
12 information where the teams compile information and
13 put it in a platform, correct?

14 A That's correct.

Page 178

Page 180

Page 179

Page 181

46 (Pages 178 - 181)

1

3 Q Have you reviewed any studies about

4 CTE?

5 A I can't recall that I have.

Page 182

Page 184

Page 183

Page 185

47 (Pages 182 - 185)

<p>11 Q How many disability claims have been 12 presented to you during your time on the committee? 13 A I don't have a specific number. 14 Q Give me an estimate. 15 A Roughly a thousand a year. 16 Q You said there are various statistics 17 that are presented at these board meetings. Do you 18 have the statistics on what percentage of claims 19 are granted? 20 A I don't. I have access to the 21 statistics. I believe they're on the Plan 22 director's report.</p> <p style="text-align: right;">Page 198</p>	<p>1 MR. DENNIE: Yeah, I don't have them, 2 but that's a certainly responsive document or 3 documents. 4 BY MR. DENNIE: 5 Q All right. So you believe that you 6 presided over approximately a thousand disability 7 applications a year during your tenure, correct? 8 A I think that's fair, yeah, 9 thereabouts. 10 Q Where we would find the percentage of 11 claims that were granted, would be in the Plan 12 director's report that's done quarterly. Is that 13 correct? 14 A I believe so. 15 Q And the same question as to the 16 claims that were denied. There would be a 17 percentage of claims denied showing the Plan 18 director's report that gets prepared quarterly. Is 19 that correct? 20 A I believe -- I believe so. That may 21 not be the case. It may just show the number of 22 claims.</p> <p style="text-align: right;">Page 200</p>
<p>1 Q Okay. So the Plan director's report? 2 A I believe so. I may be -- the number 3 of claims that come through and the number of 4 claims that are decided is on that. I believe it 5 includes percentage of approvals and denials, but I 6 might be mistaken. 7 Q How often does the Plan director 8 report come out? 9 A Quarterly, for the board meetings. 10 MR. DENNIE: Is that something that 11 you all can give us since -- I mean, I don't have 12 our request here, but that's certainly responsive 13 to probably more than one of our requests for 14 production. 15 MR. MEEHAN: I'll take it under 16 advisement and circle back to you. 17 MR. DENNIE: Let me know as soon as 18 you can. We're running out of time for discovery. 19 MR. MEEHAN: If you can direct us to 20 a particular request you've made, that would be 21 helpful. You can do that offline when you have an 22 opportunity.</p> <p style="text-align: right;">Page 199</p>	<p>22 I missed part of it.</p> <p style="text-align: right;">Page 201</p>

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Page 202

Page 204

Page 203

22

Q What's the time period for

Page 205

52 (Pages 202 - 205)

1 neurological symptoms to show for concussion
2 syndrome?
3 A I do not -- I don't know.

Page 206

?
Page 208

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Page 207

Page 209

53 (Pages 206 - 209)

	<p>8 Q Have you ever seen a definition of</p> <p>9 "clear" and "convincing" as it pertains to a</p> <p>10 disability benefits application?</p> <p>11 A If it's not a defined term in the</p> <p>12 Plan document, I cannot recall there being a</p> <p>13 definition.</p> <p>Page 214</p>
	<p>1</p> <p>Page 215</p>

Page 216

Page 217

55 (Pages 214 - 217)

	<p>21 BY MR. DENNIE: 22 Q So earlier, you told me that you were</p> <p>Page 218 Page 220</p>
<p>17 Q Active football T&P benefits are 18 benefits that occur from injuries while playing 19 professional football, correct? 20 A Yes. As a result of NFL Football, 21 yes. 22</p> <p>Page 219</p>	<p>1 aware that concussion syndrome and associated 2 ailments can occur instantly and it can occur down 3 the road, correct? 4 A That's my understanding.</p> <p>17 Q In your eight years or so on the 18 committee, are you aware of any player who had 19 concussions while competing, but had symptoms that 20 showed up five, six, seven, eight years later 21 receiving active football T&P benefits? 22 A I can't recall.</p> <p>Page 221</p>

56 (Pages 218 - 221)

<p>1 Q So it's important that I understand.</p> <p>2 You're saying that's no or you just don't recall</p> <p>3 any case?</p> <p>4 A I don't recall. It may have</p> <p>5 happened, it may not have happened.</p> <p>6 Q Where would we be able to obtain that</p> <p>7 information?</p> <p>8 A I'm not sure. The Player Benefits</p> <p>9 Office is the administrator of disability and</p> <p>10 retirement claims, so they have access to all the</p> <p>11 records.</p> <p>Page 222</p>	<p>1</p> <p>Page 224</p>
<p>Page 223</p>	<p>15 Q So who defined this language "changed</p> <p>16 circumstances" as a new injury?</p> <p>17 A It was put into practice by the</p> <p>18 initial claims committee and by the board. I'm not</p> <p>19 sure that any specific person came up with the</p> <p>20 definition on their own.</p> <p>21 Q So as we sit here today, you don't</p> <p>22 know who came up with that language?</p> <p>Page 225</p>

<p>1 A I don't know.</p> <p>2 Q Was it in place prior to you serving</p> <p>3 on the committee?</p> <p>4 A I can't recall.</p> <p>5 Q Were you a part of creating this</p> <p>6 definition that you now say exists of a new injury</p> <p>7 for reclassification for those cases?</p> <p>8 A I can't recall.</p> <p>9 Q Who would know who defined that?</p> <p>10 A I don't know.</p> <p>11 Q You don't have a clue who would know</p> <p>12 where we would find how that term came to be</p> <p>13 defined?</p> <p>14 A I don't know. The Plan's been around</p> <p>15 for a long time.</p> <p>16 Q Do you know when the changed</p> <p>17 circumstance language first appeared in the Plan</p> <p>18 documents?</p> <p>19 A I don't know.</p> <p>Page 226</p>	<p>Page 228</p>
<p>13 Q In your time on the committee, can</p> <p>14 you recall a single circumstance where a</p> <p>15 reclassification request was granted for a football</p> <p>16 player who showed some signs of concussion</p> <p>17 syndrome, but later had many, many more signs,</p> <p>18 five, six, seven, eight years down the road?</p> <p>19 A I can't recall.</p> <p>Page 227</p>	<p>Page 229</p>

<p>1 THE WITNESS: Well, I will read it.</p> <p>2 "An Eligible Player whose application for total and</p> <p>3 permanent disability ("T&P") benefits is received</p> <p>4 before January 1, 2015, who is determined by the</p> <p>5 Retirement Board or the Initial Claims Committee to</p> <p>6 be totally and permanently disabled, will receive a</p> <p>7 monthly T&P benefit."</p> <p>8 And I left some out, but that's --</p> <p>9 generally that's what I understand it to mean.</p> <p>10 BY MR. DENNIE:</p> <p>11 Q Do you understand Mr. Cloud to meet</p> <p>12 the requirements of Section 5.1?</p> <p>13 A Yes. Without seeing his specific</p> <p>14 situation, but yes.</p> <p>15 Q I'm sorry. You said without</p> <p>16 something?</p> <p>17 A Yes. Yes, he meets that definition.</p> <p>18 Q Okay. Do you know in what way</p> <p>19 Mr. Cloud was able to show that he was</p> <p>20 permanently -- totally and permanently disabled --</p> <p>21 do you know in what way Mr. Cloud was able to show</p> <p>22 he was totally and permanently disabled?</p> <p style="text-align: right;">Page 230</p>	<p style="text-align: right;">Page 232</p>
<p>1 A From my review before today, he</p> <p>2 submitted a Social Security work letter.</p> <p>3 Q Okay. What section applies to that?</p> <p>4 A Section 5.2(b).</p> <p>5 Q You don't have to read the whole</p> <p>6 thing, but if you know based on looking at it, what</p> <p>7 is the requirements to meet Section 5.2(b)?</p> <p>8 A That a player is not currently</p> <p>9 receiving his pension, he's an eligible player, and</p> <p>10 he's receiving a disability benefit through the</p> <p>11 Social Security Administration.</p> <p>12 Q And is your understanding that</p> <p>13 Mr. Cloud was considered by the Social Security</p> <p>14 Administration to be totally and permanently</p> <p>15 disabled?</p> <p>16 A That's my understanding.</p> <p style="text-align: right;">Page 231</p>	<p>1</p> <p style="text-align: right;">Page 233</p>

	<p>15 Q From your knowledge, and you've read</p> <p>16 back through the files, is there any evidence that</p> <p>17 Mr. Cloud received concussions or other head</p> <p>18 injuries anywhere other than playing in the NFL?</p> <p>19 A Not that I recall.</p> <p>Page 234</p>
	<p>5 Q So you don't have any reason to</p> <p>6 dispute that the concussion syndrome that Mr. Cloud</p> <p>7 experiences is from his playing in the NFL,</p> <p>8 correct?</p> <p>9 A Without looking into the specifics,</p> <p>10 again, the details here, I don't believe so. I</p> <p>11 don't recall though.</p> <p>12 Q And my question was a little bit</p> <p>13 different.</p> <p>14 A Okay.</p> <p>15 Q You don't have anything to dispute</p> <p>16 that, that you're aware of?</p> <p>17 A I do not have --</p> <p>18 MR. MEEHAN: Objection. Lacks</p> <p>19 foundation.</p> <p>20 Go ahead.</p> <p>21 THE WITNESS: I do not, no.</p> <p>22</p> <p>Page 235</p>

60 (Pages 234 - 237)

	<p>1 while playing in the NFL to receive Active Football</p> <p>2 benefits if he has a delayed onset of symptoms for</p> <p>3 four, five, six, seven, eight years? Is it</p> <p>4 possible?</p> <p>5 MR. MEEHAN: Objection. Incomplete</p> <p>6 hypothetical.</p> <p>7 Go ahead and answer.</p> <p>8 THE WITNESS: It's a hypothetical</p> <p>9 situation.</p> <p>10 BY MR. DENNIE:</p> <p>11 Q It is not.</p>
Page 238	Page 240
<p>18 BY MR. DENNIE:</p> <p>19 Q Anyway, so you were on the committee</p> <p>20 for eight years. I'm asking your experience. This</p> <p>21 is not a hypothetical. In your experience, is it</p> <p>22 possible for a player who receives concussions</p> <p>Page 239</p>	Page 241

	<p>17 Q In Section 5.7(b) of Exhibit 1, is</p> <p>18 also where we see the changed circumstances</p> <p>19 language. Do you see that?</p> <p>20 A I do.</p> <p>21 Q Do you see where it is defined</p> <p>22 anywhere?</p> <p>Page 242Page 244</p>
	<p>1 A Yeah, again, it's not a capitalized</p> <p>2 term, so I would have to assume it's not defined.</p> <p>3 Q Now that you've had an opportunity to</p> <p>4 review this, does that refresh your memory on who</p> <p>5 defined the term "changed circumstances"?</p> <p>6 A I don't know who defined the term,</p> <p>7 but the practice that has been in place for the</p> <p>8 committee and for the board is that a changed</p> <p>9 circumstance is a new or different impairment.</p> <p>10 Q What do you mean by "impairment"?</p> <p>11 A A new injury, a new condition.</p> <p>Page 243Page 245</p>

<p>6 BY MR. DENNIE:</p> <p>7 Q I'm not asking you to opine on</p> <p>8 medical terminology. I'm asking you a simple</p> <p>9 question based on your experience, and you have</p> <p>10 said you've reviewed thousands of cases, okay?</p> <p>11 In your experience in reviewing these</p> <p>12 cases where concussion syndrome has been indicated</p> <p>13 as the reason for the need for benefits, you would</p> <p>14 agree that the symptoms change over time, correct?</p> <p>15 MR. MEEHAN: Objection. Asked and</p> <p>16 answered. Same objection.</p> <p>17 BY MR. DENNIE:</p> <p>18 Q You can answer.</p> <p>19 A Conditions do change, yes.</p> <p>Page 247</p>	<p>Page 248</p> <p>10 BY MR. DENNIE:</p> <p>11 Q Anyways, so let's focus on the</p> <p>12 question.</p> <p>13 In your experience on the committee</p> <p>14 reviewing thousands of records of medical</p> <p>15 documentation, which I would assume because you've</p> <p>16 said many of them are concussion cases, those</p> <p>17 symptoms can be much worse later down the road,</p> <p>18 correct?</p> <p>19 A Conditions do change, sure. Yes.</p> <p>?</p> <p>Page 249</p>

63 (Pages 246 - 249)

	<p>6 Q Do you ever do a write-up or analysis</p> <p>7 of the medical records yourself?</p> <p>8 A I do not.</p> <p>19 Do you do a written analysis of the</p> <p>20 medical records that are presented?</p> <p>21 A I do not.</p> <p>Page 270</p>	
<p>1</p> <p>Page 271</p>	<p>1</p> <p>9 Q And by granting Inactive A benefits,</p> <p>10 you're agreeing that Mr. Cloud meets the disability</p> <p>11 requirement per the Plan documents, correct?</p> <p>12 A That's correct.</p> <p>Page 273</p>	

<p>3 Q I would have to ask the members of</p> <p>4 the board what they did to make their</p> <p>5 determination, correct?</p> <p>6 A That's correct.</p> <p style="text-align: right;">Page 278</p>	<p style="text-align: right;">Page 280</p>
<p style="text-align: right;">Page 279</p>	<p>1 Q I believe you said vertigo and memory</p> <p>2 loss are symptoms that you know. Is that correct?</p> <p>3 A That's correct.</p> <p>4 Q As we sit here after going through</p> <p>5 today, do you recall any additional symptoms that</p> <p>6 you would consider concussion syndrome symptoms?</p> <p>7 A No.</p> <p>8 Q How about trouble sleeping?</p> <p>9 A Yes, it may be. I'm not a medical</p> <p>10 professional or --</p> <p>11 Q I'm not asking you as a medical</p> <p>12 professional, but you review thousands of</p> <p>13 applications and you've seen thousands of medical</p> <p>14 records, correct?</p> <p>15 A That's correct.</p> <p>16 Q Have you seen trouble sleeping as one</p> <p>17 of the symptoms associated with concussion</p> <p>18 syndrome?</p> <p>19 A I've seen it alleged in applications</p> <p>20 sure, yes.</p> <p>21 Q I take it you've also seen vertigo</p> <p>22 and memory loss because you cited those yourself,</p> <p style="text-align: right;">Page 281</p>

<p>1 correct?</p> <p>2 A Correct.</p> <p>3 Q How about forgetting simple things?</p> <p>4 Forgetfulness?</p> <p>5 A Yes, memory loss and forgetfulness.</p> <p>6 Q So, for example, if Mr. Cloud</p> <p>7 couldn't remember a simple running back sweep play,</p> <p>8 would that be something that would fall into a</p> <p>9 concussion syndrome symptom?</p> <p>10 MR. MEEHAN: Objection. Lacks</p> <p>11 foundation. Calls for expert testimony.</p> <p>12 Go ahead.</p> <p>13 BY MR. DENNIE:</p> <p>14 Q You can answer.</p> <p>15 A If he's forgetting what he needs to</p> <p>16 do for his job, I think it may, but I don't know.</p> <p>17 Q Well, I don't want to assume.</p> <p>18 Do you know what a sweep play is in</p> <p>19 football?</p> <p>20 A I do.</p> <p>21 Q I take it for anybody that's ever</p> <p>22 watched football, that's one of the most common</p> <p style="text-align: right;">Page 282</p>	<p>1 you're the one charged with determining these</p> <p>2 claims, correct?</p> <p>3 A I am. In my job of determining the</p> <p>4 claims, I am relying on medical experts to tell me</p> <p>5 whether or not a player is disabled. And my job is</p> <p>6 just to administer the terms of the Plan based on</p> <p>7 the evaluations of those medical professionals.</p> <p>8 Q Okay. So in your experience with all</p> <p>9 of that information for -- headaches are a common</p> <p>10 symptom that you see presented as concussion</p> <p>11 syndrome?</p> <p>12 A It's a common allegation on</p> <p>13 applications, yes.</p> <p>14 Q Is sensitivity to light a common</p> <p>15 symptom presented for concussion syndrome?</p> <p>16 A Yes.</p> <p>17 Q Is paranoia a common symptom for</p> <p>18 concussion syndrome that's presented to you?</p> <p>19 A It may be. I don't know.</p> <p>20 Q You've never seen paranoia?</p> <p>21 A I don't know that I recall a player</p> <p>22 saying it's because of concussion syndrome. I know</p> <p style="text-align: right;">Page 284</p>
<p>1 running plays there is, right?</p> <p>2 A It's common.</p> <p>3 Q So for a running back, if he's played</p> <p>4 running back his entire life, to forget one of the</p> <p>5 very most common plays in his job, that would be a</p> <p>6 fair thing to think of as a concussion-related</p> <p>7 symptom, correct?</p> <p>8 MR. MEEHAN: Objection. Lacks</p> <p>9 foundation.</p> <p>10 THE WITNESS: It may be. I don't</p> <p>11 know.</p> <p>12 BY MR. DENNIE:</p> <p>13 Q What about headaches, is that a</p> <p>14 common neurological symptom for concussion</p> <p>15 syndrome?</p> <p>16 MR. MEEHAN: Same objection.</p> <p>17 THE WITNESS: It may be. I don't</p> <p>18 know.</p> <p>19 BY MR. DENNIE:</p> <p>20 Q I want to be clear, I'm asking on the</p> <p>21 premise that you reviewed thousands of</p> <p>22 applications, thousands of medical records, and</p> <p style="text-align: right;">Page 283</p>	<p>1 that the player can put on the application symptoms</p> <p>2 of disability, but I can't say for certain that</p> <p>3 they're specifically relating to concussions.</p> <p>4 Q Is lack of focus a symptom of</p> <p>5 concussion syndrome that's commonly submitted for</p> <p>6 disability benefits?</p> <p>7 A It may be, yes.</p> <p>8 Q Is suicidal thoughts a common symptom</p> <p>9 of concussion syndrome that's presented in</p> <p>10 disability applications?</p> <p>11 A You said common -- they can be</p> <p>12 submitted on disability applications, yes.</p> <p>13 Q How about failure to grasp reality,</p> <p>14 is that a common symptom that's presented through</p> <p>15 concussion syndrome on disability applications?</p> <p>16 A Again, not necessarily related to</p> <p>17 concussions, but I've seen it on applications,</p> <p>18 sure.</p> <p>19 Q How about failure to maintain</p> <p>20 employment, is that a byproduct that you have seen</p> <p>21 commonly on disability applications pertaining to</p> <p>22 concussion syndrome?</p> <p style="text-align: right;">Page 285</p>

<p>1 A They wouldn't be applying for total 2 and permanent disability if they could maintain 3 employment. 4 Q Right. 5 A But I don't know that's specifically 6 relating to concussion symptoms. 7 Q How about depression, is that a 8 commonly presented symptom of concussion syndrome 9 that you have seen presented in disability 10 applications? 11 A I've seen depression on disability 12 applications. 13 Q How about migraine headaches, are 14 those commonly associated symptoms of concussion 15 syndrome that you've seen in disability 16 applications? 17 A I've seen it on disability 18 applications. 19 Q How about dementia or pre-dementia, 20 are those common symptoms that you've seen 21 associated with concussion syndrome presented on 22 disability applications?</p> <p style="text-align: right;">Page 286</p>	<p>1 is that a common symptom of concussion syndrome 2 that's been presented on disability applications? 3 A Again, maybe not related to 4 concussion syndrome, but it's been presented on 5 disability applications. 6 Q How about moods swings, is mood 7 swings a common symptom of concussion syndrome 8 that's been presented on disability applications? 9 A Same answer. 10 Q Is that yes? 11 A Same answer as the last time. Maybe 12 not related to concussion syndrome, but I've seen 13 it presented on disability applications.</p> <p style="text-align: right;">Page 288</p>
<p>1 A Again, maybe not related to 2 concussion syndrome, but I've seen it on disability 3 applications, yes. 4 Q What other ways would dementia be 5 presented? 6 A Family history. 7 Q They can get disability based on 8 family history? 9 A Yes, they would. It does not need to 10 be tied back to NFL Football. 11 Q So that would be the Inactive 12 Nonfootball-type disability benefits, correct? 13 A It -- 14 Q Or it could be Active Nonfootball? 15 A That's hypothetical, but it's 16 possible, sure. 17 Q How about trouble maintaining verbal 18 fluency, has that been a topic that you've seen 19 presented in concussion applications? 20 A I've seen it presented on disability 21 applications, yes. 22 Q How about unpredictable irritability,</p> <p style="text-align: right;">Page 287</p>	<p style="text-align: right;">Page 289</p>

<p>20 BY MR. DENNIE:</p> <p>21 Q You would agree that concussions have</p> <p>22 been a huge issue in the NFL for now over ten</p> <p>Page 290</p>	<p>18 Q Can injuries to shoulders, elbows,</p> <p>19 wrists, feet, ankles, knees, hips, can all those</p> <p>20 things qualify as permanent disabilities?</p> <p>21 A Orthopedic injuries can, yes, qualify</p> <p>22 for total and permanent disability, sure.</p> <p>Page 292</p>
<p>1 years, as more information has become available,</p> <p>2 correct?</p> <p>3 MR. MEEHAN: Objection to the form.</p> <p>4 Asked and answered.</p> <p>5 THE WITNESS: Head injuries are</p> <p>6 important, and are, yes, something that we need to</p> <p>7 be made aware of.</p> <p>8 BY MR. DENNIE:</p> <p>?</p> <p>Page 291</p>	<p>Page 293</p>

10 Q So based on what you recall from
11 reviewing your record, were you aware of anything
12 or any time where Mr. Cloud was injured other than
13 his time playing in the NFL?
14 A Not that I'm aware of.

Page 294

Page 296

Page 295

Page 297

75 (Pages 294 - 297)

	<p>10 Q When you reviewed this neurological 11 report from Dr. DiDio, did you receive a full copy 12 of the report? 13 A I can't -- I can't say specifically. 14 Q Is there any reason that Mr. Cloud 15 wouldn't have ever been provided a full copy of his 16 report until 2019? 17 A That Mr. Cloud be provided a full 18 copy of this report? 19 Q Right. 20 A No, there should not be any reason 21 for that.</p> <p>Page 302 Page 304</p>
<p>1</p>	<p>12 BY MR. DENNIE: 13 Q You assume. 14 And in looking at Dr. DiDio's report, 15 do you see that Mr. Cloud complained of vertigo and 16 headaches? 17 A Yes, I see that. 18 Q And you see at the bottom of 174 on 19 Exhibit 2, where Mr. Cloud mentions that he started 20 forgetting small things, correct? 21 A I see that, yes. 22 Q So now you've recently reviewed all</p> <p>Page 303 Page 305</p>

77 (Pages 302 - 305)

<p>12 Q Okay. So we just talked about the 13 line of duty benefits back in 2010, correct? 14 A Correct. 15 Q And there were some references to 16 small memory loss, there were some references to 17 vertigo, there were some headaches, correct? 18 A Yes, correct.</p> <p>Page 306</p>	<p>1</p> <p>Page 308</p>
<p>Page 307</p>	<p>19 BY MR. DENNIE: 20 Q So is an impairment, a new one, a 21 change in circumstance? 22 A A new impairment may be a changed</p> <p>Page 309</p>

78 (Pages 306 - 309)

<p>1 circumstance, yes.</p> <p>Page 310</p>	<p>5 Q And now with Exhibit 3, we're seeing 6 for the first time migraines, post-concussion 7 syndrome, clinical depression, impaired verbal 8 fluency, and dementia pugilistica. Do you see 9 that?</p> <p>10 A I do.</p> <p>11 Q You would agree that those weren't 12 previously listed on the application for Exhibit 2, 13 correct?</p> <p>14 A I did not see the application in 15 Exhibit 2, but I --</p> <p>16 Q I apologize. I said "application." 17 But in the medical records --</p> <p>18 A In the medical records, in 19 Dr. DiDio's report, no, I did not see that.</p> <p>Page 312</p>
<p>Page 311</p>	<p>3 Q So Items 7 through 21 on Exhibit 3, 4 CLOUD-AR-096, includes everything from shoulder, 5 elbow, wrists, hands, fingers, toes, feet, ankles, 6 knees, hips, lumbar, cervical and thoracic spine, 7 acute compartment syndrome, plantar fasciitis, and 8 a nerve injury, correct?</p> <p>9 A It does, yes.</p> <p>10 Q So many of these are newer injuries, 11 correct -- or newer symptoms, correct?</p> <p>12 A As compared to the line of duty 13 application?</p> <p>14 Q Correct.</p> <p>15 A Yes.</p> <p>16 Q And many of them are listed in both, 17 correct?</p> <p>18 A I don't see the application for line 19 of duty, but --</p> <p>20 Q And if I said "application," that's 21 my fault. I'm saying the medical reports that are 22 behind Exhibit 2, correct?</p> <p>Page 313</p>

5 Q Okay. In your review of anything
6 submitted as it pertains to Mr. Cloud's Exhibit 3
7 total and permanent disability benefits
8 application, did you review any medical scans?

9 A Not that I recall.

10 Q Were there any medical scans that
11 were contained in the administrative file?

12 A Not that I recall, no.

Page 314

Page 316

18 Q And you know from reading it that it
19 takes into account both neurological and orthopedic
20 injuries, correct?

21 A Yes, it appears so.

Page 315

Page 317

80 (Pages 314 - 317)

<p>3 Q And if he wasn't provided with his</p> <p>4 records, including his medical scans, he wouldn't</p> <p>5 be able to provide them to his own medical</p> <p>6 professionals, correct?</p> <p>7 A That's logical.</p> <p>12 Q Okay. Is there any reason for the</p> <p>13 first time Mr. Cloud's medical scans from</p> <p>14 Dr. Canizares were presented on July 29, 2021?</p> <p>15 A Doctor who? I'm sorry.</p> <p>16 Q I apologize if I said his name</p> <p>17 incorrectly, but he's the one that did the --</p> <p>18 A Oh, Canizares?</p> <p>19 Q Yes, however you say that.</p> <p>20 A Can you repeat your question? I'm</p> <p>21 sorry.</p> <p>22 Q Is there any reason that Mr. Cloud's</p> <p style="text-align: right;">Page 318</p>	<p style="text-align: right;">Page 320</p>
<p>1 scans from Dr. Canizares would not be presented</p> <p>2 until July 29 of 2021?</p> <p>3 A Presented to whom?</p> <p>4 Q Mr. Cloud.</p> <p>5 A No, there should be no reason if he</p> <p>6 requested those.</p> <p>7 Q Do you know a Dr. Mandelbaum?</p> <p>8 A I don't know him personally, no.</p> <p>9 Q Do you know that he was a Plan</p> <p>10 neutral?</p> <p>11 A I believe so. I -- I can't recall</p> <p>12 the terms of when he left, but I'm familiar with</p> <p>13 the name just generally.</p> <p>14 Q If he did scans of Mr. Cloud, is</p> <p>15 there any reason those documents wouldn't be</p> <p>16 provided to Mr. Cloud?</p> <p>17 A If they were ordered by the Plan, no,</p> <p>18 and he requested them, no, he should have access to</p> <p>19 those records.</p> <p style="text-align: right;">Page 319</p>	<p style="text-align: right;">Page 321</p>

	<p>9 Q They were not in the line of duty</p> <p>10 claim, correct?</p> <p>11 A I'm sorry. Again, I didn't see the</p> <p>12 line of duty application, but --</p> <p>13 Q But you have the medical reports.</p> <p>14 A Medical reports, right, mention, I</p> <p>15 believe, vertigo and headaches, we determined, and</p> <p>16 forgetfulness.</p> <p>17 Q And you would agree that down there</p> <p>18 in the disabilities and causes, there are new</p> <p>19 symptoms?</p> <p>20 A It appears so, yes.</p> <p>21 Q And we've discussed before symptoms</p> <p>22 can be impairments, correct?</p> <p>Page 322</p>
	<p>1 A I mean, they could be,</p> <p>2 hypothetically.</p> <p>Page 323</p>

	<p>11 Q So you would agree a new impairment</p> <p>12 would be an impaired verbal fluency, for example?</p> <p>13 MR. MEEHAN: Objection to the form.</p> <p>14 BY MR. DENNIE:</p> <p>15 Q It's your word. It's literally the</p> <p>16 same verbiage.</p> <p>17 A Yes. So a new impairment -- this is</p> <p>18 the first time we're seeing this impairment in</p> <p>19 Mr. Cloud's --</p> <p>Page 326</p>
	<p>9 BY MR. DENNIE:</p> <p>10 Q You would agree that impaired verbal</p> <p>11 fluency is an impairment, correct?</p> <p>12 MR. MEEHAN: Objection to the form.</p> <p>13 THE WITNESS: I would agree that it's</p> <p>14 an impairment, yes.</p> <p>15 BY MR. DENNIE:</p> <p>Page 327</p>

1

3 Q I believe you testified earlier, but
4 I want to confirm, you did not write Exhibit 4,
5 correct?

6 A That's correct.

22 Q So we'll flip to CLOUD-AR-284 in

Page 332

1 Exhibit 4. And let me know when you're there.

2 A Yes, I'm here.

Page 331

Page 333

<p>Page 334</p>	<p>1 at this document?</p> <p>2 A I don't recall.</p> <p>3 Q Do you know anybody that provided</p> <p>4 advice to you as it pertains to Exhibit 3?</p> <p>5 A No.</p> <p>6 Q Do you know whether Elton Banks</p> <p>7 provided any advice to you?</p> <p>8 A No.</p> <p>9 Q So other than your conclusion that</p> <p>10 Mr. Cloud didn't meet the terms of shortly after,</p> <p>11 as defined in the Plan, you can't give us any more</p> <p>12 details on how you arrived at that conclusion. Is</p> <p>13 that correct?</p> <p>14 A Yeah, that's correct.</p> <p>15 Q All right. Go to 5, please.</p> <p>16 A Okay.</p> <p>17 (Reynolds Deposition Exhibit Number 5</p> <p>18 marked for identification.)</p> <p>19 BY MR. DENNIE:</p> <p>20 Q What is Exhibit 5?</p> <p>21 A It is a request for reclassification.</p> <p>22 It also contains a new application request dated</p> <p>Page 336</p>
<p>19 Q Did you make a single change to this</p> <p>20 document?</p> <p>21 A Not that I recall.</p> <p>22 Q Do you know whether you even looked</p> <p>Page 335</p>	<p>1 February 14th, 2016.</p> <p>2</p> <p>Page 337</p>

<p>22</p> <p>Page 338</p>	<p>4 Q How about affective disorder, is that</p> <p>5 a new condition?</p> <p>6 A It may be.</p> <p>Page 340</p>
<p>4 Q So earlier, you testified that a</p> <p>5 change in circumstance can occur with a new</p> <p>6 impairment. Do you recall that?</p> <p>7 A Yes.</p> <p>8 Q What do you define as an impairment?</p> <p>9 A A new injury or a new condition.</p> <p>10 Q Okay. And a new condition can be a</p> <p>11 symptom of concussion syndrome, correct?</p> <p>12 A It possibly could.</p> <p>Page 339</p>	<p>1</p> <p>10 Q You would agree that affective</p> <p>11 disorder, which is a clinically defined condition,</p> <p>12 is a new impairment or condition that does not</p> <p>13 appear in Exhibit 3, correct?</p> <p>14 A It's a new allegation, sure.</p> <p>15 Q "Attention and decision problems," do</p> <p>16 you see that?</p> <p>17 A I do.</p> <p>18 Q Is that included in Exhibit 3</p> <p>19 anywhere?</p> <p>20 A Not on the application form, no.</p> <p>Page 341</p>

86 (Pages 338 - 341)

	<p>15 Q Now it's severe, significant memory</p> <p>16 loss, correct?</p> <p>17 A Okay. Yes.</p> <p>18 Q That's different, right?</p> <p>19 A Yes.</p> <p>Page 342</p>
<p>10 Q And then now on Exhibit 5, two years</p> <p>11 later, there are now even additional conditions and</p> <p>12 impairments that are referenced, correct?</p> <p>13 A They're alleged, but yes.</p> <p>Page 343</p>	<p>Page 344</p> <p>Page 345</p>

<p>20 BY MR. DENNIE: 21 Q So who made the decision on 22 Mr. Cloud's reclassification request, the ultimate</p> <p>Page 346</p>	<p>:</p> <p>5 Q You, yourself, did not make the 6 decision that is shown in Deposition Exhibit 6, 7 right? 8 A No. This was a final decision made 9 by the retirement board.</p> <p>13 Q The people that voted on the decision 14 made by the retirement board are going to be the 15 people that know what was discussed, correct? 16 A I assume so, yes.</p> <p>Page 348</p>
<p>1 decision? 2 A The final decision on his 3 reclassification request was made by the retirement 4 board. 5 Q I'm sorry. I didn't hear you. 6 A I'm sorry. The final decision of his 7 reclassification request was made by the retirement 8 board. 9</p> <p>Page 347</p>	<p>Page 349</p>

	<p>1 Q Did you read Mr. Cloud's Social</p> <p>2 Security benefits application -- excuse me.</p> <p>3 Did you -- I'm reading "application"</p> <p>4 on the page and said it. I'm sorry.</p> <p>5 Did you read Mr. Cloud's decision</p> <p>6 from the Social Security Administration?</p> <p>7 A I did, yes.</p> <p>8 Q And did you read that in your prep</p> <p>9 and review for today?</p> <p>10 A Yes, I looked at it.</p> <p>11 Q You would agree -- and I can point</p> <p>12 you to it if you didn't see it. It starts at</p> <p>13 CLOUD-AR-299, Exhibit 7.</p> <p>14 A 299, Exhibit 7. Okay.</p> <p>15 Q And you would agree in here it lists</p> <p>16 out both orthopedic and neurological conditions,</p> <p>17 correct?</p> <p>18 A Yes, it does.</p> <p>Page 354</p>
	<p>Page 356</p> <p>Page 355</p> <p>Page 357</p>

<p>Page 358</p>	<p>--</p> <p>Page 360</p>
<p>Page 359</p>	<p>1</p> <p>12 Q Flip to 484, CLOUD-AR-484, of Exhibit</p> <p>13 7.</p> <p>14 A Okay.</p> <p>15 Q What is this document?</p> <p>16 A This is a summary of the player's</p> <p>17 request for reclassification. It was presented to</p> <p>18 the board at that same meeting.</p> <p>19 Q Do you know who prepared this</p> <p>20 document?</p> <p>21 A I believe it was Groom Law Group.</p> <p>Page 361</p>

	<p>1 Q I don't disagree with you, but I</p> <p>2 don't know what they did or didn't do.</p> <p>3 A Yeah, I don't either.</p> <p>4 Q And the only way for me to figure</p> <p>5 that out is to talk to the people that made these</p> <p>6 decisions, correct?</p> <p>7 MR. MEEHAN: Objection. Asked and</p> <p>8 answered and legal conclusion. I believe that's</p> <p>9 the fourth time you've asked that.</p> <p>10 BY MR. DENNIE:</p> <p>11 Q We're talking about specific</p> <p>12 documents and what they reviewed.</p> <p>13 A I don't know how the -- how the board</p> <p>14 came to their decision.</p>
Page 362	Page 364
<p>12 If the committee decides against</p> <p>13 granting Mr. Cloud's reclassification request, does</p> <p>14 the board conduct its own independent review?</p> <p>15 A Yes, they do.</p> <p>16 Q Are you aware of anything they did?</p> <p>17 A I am not, no.</p> <p>18 Q Are you aware of whether they just</p> <p>19 rubber-stamped the decision of the committee and</p> <p>20 said denied and moved on?</p> <p>21 A I don't believe that they would</p> <p>22 fulfill their fiduciary duties if they did that.</p>	(
Page 363	Page 365

<p>1</p> <p>9 BY MR. DENNIE:</p> <p>10 Q Can you flip to Exhibit 11?</p> <p>11 A Okay.</p> <p>12 Q It's marked as CLOUD_193.</p> <p>13 A Got it.</p> <p>14 Q Why was it that Hannah Coffman of the</p> <p>15 Groom Law Firm was the one that presented Mr. Cloud</p> <p>16 with access to his files?</p> <p>17 A I don't know. She's the</p> <p>18 administrative assistant, so I assume that was</p> <p>19 within her duties.</p> <p>20 Q Why didn't the Plan just give him his</p> <p>21 files?</p> <p>22 A I don't know.</p> <p style="text-align: right;">Page 374</p>	<p>1 after his applications were filed?</p> <p>2 A I don't know.</p> <p style="text-align: right;">Page 376</p>
<p>1 Q How did the Groom Law Firm get ahold</p> <p>2 of Mr. Cloud's files?</p> <p>3 A I don't know.</p> <p>4 Q Are you aware of Mr. Cloud giving any</p> <p>5 authority to the Groom Law Firm to hold his medical</p> <p>6 documents?</p> <p>7 A Not to my knowledge. I don't know.</p> <p>16 Q Do you have any reason to understand</p> <p>17 why on January 18th, 2019 the Groom Law Firm</p> <p>18 produced 860 pages of records?</p> <p>19 A I do not, no.</p> <p>20 Q Do you know why there was an</p> <p>21 approximately 330-page difference in the number of</p> <p>22 records that was submitted to Mr. Cloud three years</p> <p style="text-align: right;">Page 375</p>	<p style="text-align: right;">Page 377</p>

<p>Page 382</p>	<p>1 Q Were you in attendance for this 2 meeting? 3 A It appears that I was not. 4 Q I know you said you weren't in 5 attendance, so I just want to make sure we're on 6 the same page. And when you're saying you weren't 7 in attendance, you weren't in person, correct? 8 A Correct. 9 Q Did you appear by phone by chance? 10 A Not to my recollection. 11 Q So earlier when we were talking about 12 the board's decision of Mr. Cloud's 2016 13 reclassification decision, and you said you 14 believed you were there, these minutes reflect 15 apparently you were not, correct? 16 A That's correct. 17 Q So you have absolutely no idea what 18 happened at the November 15th, 16th, 2016 board 19 meeting, correct? 20 A Aside from what I read in these 21 meeting minutes and the counsel report, no, I don't 22 know what took place. No.</p> <p>Page 384</p>
<p>14 Q I just want to flip over to Exhibit 15 12, CLOUD_MIN_005. 16 A Okay. 17 Q Are you there? 18 A I am. 19 Q What do you understand this to be? 20 A These appear to be the meeting 21 minutes for the November 2016 Retirement Board 22 meeting.</p> <p>Page 383</p>	<p>1 Q So if I asked you what was said about 2 Mr. Cloud's case, you wouldn't have a clue, 3 correct? 4 A I do not know. 5 Q Is that correct? 6 A Yes, that's correct.</p> <p>Page 385</p>

	<p>19 Q Do you know how much money is used to</p> <p>20 fund the Plan?</p> <p>21 A No, I don't.</p> <p>22 Q I know we talked earlier about how</p> <p>Page 386 Page 388</p>
<p>1</p> <p>Page 387</p>	<p>1 much money was paid out in a given year by the</p> <p>2 Plan. Now that we've gone through all of this, and</p> <p>3 you've refreshed your memory, do you know how much</p> <p>4 money has been paid out in any given year?</p> <p>5 A No, I don't.</p> <p>6 Q Do you know if funds are not used to</p> <p>7 pay disability benefits, what happens to them?</p> <p>8 A No, I don't.</p> <p>9 Q Are you involved in any way in what</p> <p>10 expenses are paid by the Plan?</p> <p>11 A No, I'm not.</p> <p>Page 389</p>

<p>Page 391</p>	<p>Page 392</p> <p>4 So earlier, we were talking about 5 disability claims and percentages and things like 6 that. And you said you don't have them, correct? 7 A That's correct. I don't maintain 8 that. 9 Q So the best place to get that 10 information would be from the Plan directly, 11 correct? 12 A Yes, I believe so.</p> <p>18 Q Have you ever reviewed research or 19 studies that showed that three out of ten former 20 NFL players resigned early due to neurodegenerative 21 disease? 22 A Not to my recollection, no.</p> <p>Page 393</p>

<p>1 Q Have you ever been educated on that</p> <p>2 topic?</p> <p>3 A Not to my recollection, no.</p> <p>4 Q Have you ever read any of</p> <p>5 Dr. Bennet Omalu's research on CTE?</p> <p>6 A Not to my recollection, no.</p> <p>7 Q Have you ever been educated on</p> <p>8 Dr. Bennet Omalu's research on CTE?</p> <p>9 A Not to my recollection, no.</p> <p>10 Q Did you read the 2019 study led by</p> <p>11 Boston University in Annals of Neurology?</p> <p>12 A Under what? I'm sorry.</p> <p>13 Q Annals of Neurology?</p> <p>14 A Not to my recollection, no.</p> <p>15 Q Have you ever read a study that</p> <p>16 indicates three or more concussions have a fivefold</p> <p>17 prevalence of mild cognitive impairment?</p> <p>18 A Not to my recollection.</p> <p>19 Q Do you know what mild cognitive</p> <p>20 impairment is?</p> <p>21 A It's -- the medical diagnosis of it,</p> <p>22 I assume, you're asking?</p> <p style="text-align: right;">Page 394</p>	<p>1 shouldn't take place.</p> <p>2 Q But you would agree that the Plan and</p> <p>3 the committee itself has the ability to request</p> <p>4 that the player go see a neutral physician, right?</p> <p>5 A Yes, I agree.</p> <p>6 Q And if they do go see a neurologist,</p> <p>7 would you expect that the neurologist would order a</p> <p>8 CTE scan?</p> <p>9 MR. MEEHAN: Objection. No</p> <p>10 foundation.</p> <p>11 THE WITNESS: I wouldn't expect a</p> <p>12 neurologist to do anything. He's the neurologist,</p> <p>13 so he can do what he wants to to come up with his</p> <p>14 determination of whether or not a player is</p> <p>15 disabled or not.</p> <p>16 BY MR. DENNIE:</p> <p>17 Q Okay. Well, I understand you're</p> <p>18 saying, "Hey, neurologist, do your thing." But I</p> <p>19 decide a lot of cases, too, maybe not in this</p> <p>20 world, but you see documents come in and you go,</p> <p>21 "Why didn't they do this?"</p> <p>22 Do you ever have a circumstance where</p> <p style="text-align: right;">Page 396</p>
<p>1 Q I'm not asking you to be a medical</p> <p>2 doctor or have a great in-depth knowledge of</p> <p>3 everything associated with it, but what I'm asking</p> <p>4 is are you familiar with that term?</p> <p>5 A I am familiar with the term, yes.</p> <p>6 Q Do you know generally what it means?</p> <p>7 A Generally, yes.</p> <p>8 Q What do you understand it to mean?</p> <p>9 A The inability to focus, memory</p> <p>10 issues, things of that nature.</p> <p>11 Q Do you know what Second Impact</p> <p>12 Syndrome is?</p> <p>13 A No, I don't.</p> <p>14 Q For a player who's submitting</p> <p>15 applications for disability benefits, do you</p> <p>16 believe it's important for a CTE scan to be</p> <p>17 conducted on them?</p> <p>18 A Not necessarily. It may be.</p> <p>19 Q Why not?</p> <p>20 A The player is encouraged to submit</p> <p>21 his documents as he requests that scans take place,</p> <p>22 but if he's not alleging that, then, no, it</p> <p style="text-align: right;">Page 395</p>	<p>1 you review a neurological report and say, "He</p> <p>2 didn't even have him sit for a CTE"? Sorry. I</p> <p>3 just butchered that again.</p> <p>4 Do you ever look at a neurological</p> <p>5 report from a doctor and say, "He didn't even have</p> <p>6 him sit for a CTE exam"?</p> <p>7 A Not to my recollection, no.</p> <p>8 Q Do you think it's important for</p> <p>9 athletes who are suffering from concussion syndrome</p> <p>10 to be seen by a neurologist that submits them to an</p> <p>11 MRI?</p> <p>12 MR. MEEHAN: Objection. Speculation.</p> <p>13 THE WITNESS: It's up to the</p> <p>14 neurologist. I'm not sure.</p> <p>15 BY MR. DENNIE:</p> <p>16 Q Same question as it pertains to EEGs.</p> <p>17 Do you believe that those are important for you to</p> <p>18 review on the committee deciding disability</p> <p>19 benefits applications?</p> <p>20 A I don't believe so.</p> <p>21 MR. MEEHAN: Same objection to all of</p> <p>22 these questions.</p> <p style="text-align: right;">Page 397</p>

<p>6 Q Have you reviewed any studies that</p> <p>7 indicate the average onset of CTE symptoms is 42.8</p> <p>8 years?</p> <p>9 A Not to my recollection, I have not.</p> <p>10 Q We talked about this a little before,</p> <p>11 but have you seen studies that have indicated that</p> <p>12 CTE symptoms may not show up for eight to ten years</p> <p>13 after retirement?</p> <p>14 A No, not to my recollection.</p> <p>15 Q Are you saying those don't exist or</p> <p>16 you just haven't read it?</p> <p>17 A I haven't read it.</p> <p>Page 399</p>	<p>1 BY MR. DENNIE:</p> <p>2 Q Have you ever reviewed the 2019</p> <p>3 study, "Chronic Traumatic Encephalopathy in</p> <p>4 Athletes: Progressive Tauopathy After Repetitive</p> <p>5 Head Injuries"?</p> <p>6 A Not to my recollection.</p> <p>7 Q Have you reviewed the 2017 study,</p> <p>8 "Clinicopathological Evaluation of Chronic</p> <p>9 Traumatic Encephalopathy in Players of American</p> <p>10 Football"?</p> <p>11 A Not to my recollection.</p> <p>Page 401</p>

14 Q Sure.

15 We've gone through all these very
16 important studies that people in the sports world,
17 and specifically in football, have looked at and
18 discussed in great detail as it pertains to
19 concussion syndrome. You have indicated you have
20 not reviewed any of them, correct?

21 A I can't recall that I have, no.

Page 402

Page 404

Page 403

Page 405

102 (Pages 402 - 405)

<p>2 BY MR. DENNIE:</p> <p>3 Q But you would agree that the purpose</p> <p>4 of the Plan, as it pertains to disability benefits,</p> <p>5 is to fund disabled players, right?</p> <p>6 That's the purpose?</p> <p>7 A The purpose is that -- yes, that</p> <p>8 disabled players receive monies that they are</p> <p>9 entitled to based on the terms of the Plan, yes.</p>	

Page 418

Page 420

Page 419

Page 421

106 (Pages 418 - 421)

1 Cloud, Michael v. The Bert Bell/Pete Rozelle NFL Player
2 Patrick Charles Reynolds (#4745148)

3 ACKNOWLEDGEMENT OF DEPONENT

4 I, Patrick Charles Reynolds, do hereby declare that I
5 have read the foregoing transcript, I have made any
6 corrections, additions, or changes I deemed necessary as
7 noted above to be appended hereto, and that the same is
8 a true, correct and complete transcript of the testimony
9 given by me.

10 
11 _____

9/3/2021

12 Patrick Charles Reynolds

Date

13 *If notary is required

14 SUBSCRIBED AND SWORN TO BEFORE ME THIS

15 _____ DAY OF _____, 20____.

16
17
18 _____
19 NOTARY PUBLIC
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APPENDIX 3

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION

MICHAEL CLOUD, :
 :
 :
 Plaintiff, :
 : Civil Action No.:
 vs. :
 : 3:20-CV-01277-E
 THE BERT BELL/PETE ROZELLE :
 NFL PLAYER RETIREMENT PLAN, :
 :
 Defendant. :

DEPOSITION OF CHRISTOPHINE SMITH

DATE: August 5, 2021
TIME: 8:01 a.m. to 4:55 p.m.
LOCATION: Groom Law Group
1701 Pennsylvania Avenue
Suite 1200
Washington, D.C. 20006

REPORTED BY: Felicia A. Newland, CSR

Veritext Legal Solutions
1250 Eye Street, N.W., Suite 350
Washington, D.C. 20005

1 the role of the commissioner on the board?
2 A The commissioner acts as the chairman
3 of the retirement board.
4 Q Does he have a vote?
5 A No.

Page 22

Page 24

Page 23

Page 25

7 (Pages 22 - 25)

<p>11 Q What time period did you serve on the 12 committee? 13 A I have served on the committee since 14 its inception, which I believe was in 2006. And I 15 still serve on the committee. 16 Q So you served on the committee from 17 2006 to the present. Is that correct? 18 A Correct. 19 Q Do you know on a statistical basis 20 how many disability claims have been granted versus 21 denied? 22 A I do not.</p> <p style="text-align: right;">Page 26</p>	<p>15 Q Okay. So if I was trying to 16 determine when benefits were provided and that case 17 granted or denied, where would I find that 18 information? 19 A You'd probably find that from the 20 Plan Benefit Office. 21 Q Okay. Yesterday there was some 22 testimony about quarterly reports prepared by the</p> <p style="text-align: right;">Page 28</p>
<p>?</p> <p style="text-align: right;">Page 27</p>	<p>1 claim benefits office? 2 A Yes, for the retirement board meeting 3 purposes. 4 Q Have you seen those records? 5 A Yes. 6 Q In your experience, are they prepared 7 every quarter? 8 A Yes. 9 Q So that's something that the Plan can 10 get its hands on pretty easy I would think, 11 correct? 12 A I would think so.</p> <p>17 How do you receive documentation for 18 board meetings? 19 A They are included in the counsel 20 report. 21 Q Okay. Tell me what a counsel report 22 is.</p> <p style="text-align: right;">Page 29</p>

<p>1 A The counsel report is the information</p> <p>2 that Groom Law Group compiles for the retirement</p> <p>3 board meeting.</p> <p>4 Q So the quarterly report, is that an</p> <p>5 attachment to the counsel report?</p> <p>6 A It is in the counsel report -- a part</p> <p>7 of the counsel report.</p> <p>8 Q And I just want to be clear on how it</p> <p>9 gets there. So you're familiar with the Plan or</p> <p>10 the retirement board -- let me do that another way.</p> <p>11 So you're familiar with the</p> <p>12 retirement board -- let me do that again. Today, I</p> <p>13 can't talk. It's something about the air.</p> <p>14 You're familiar that the retirement</p> <p>15 board compiles statistical information on whether</p> <p>16 claims are granted or denied, correct?</p> <p>17 A The Claim Benefit Office compiles</p> <p>18 that information.</p> <p>19 Q What did I say? I said the</p> <p>20 retirement board?</p> <p>21 A Yeah, you did.</p> <p>22 Q Okay. I'm sorry.</p> <p style="text-align: right;">Page 30</p>	<p style="text-align: right;">Page 32</p>
<p>1 The Plan Benefit Office compiles</p> <p>2 granted versus denied disability applications,</p> <p>3 correct?</p> <p>4 A Yes.</p> <p>5 Q And that's a document that we should</p> <p>6 be able to get our hands on pretty easily, correct?</p> <p>7 A I would think so.</p> <p>8 Q As it relates to funding of the Plan,</p> <p>9 are there documentation, records, that you have</p> <p>10 seen that indicates how much funding goes out on a</p> <p>11 quarterly basis?</p> <p>12 A I believe that is in the counsel</p> <p>13 report as well.</p> <p>14 Q So that's also information that's</p> <p>15 compiled by the retirement -- excuse me. Let me</p> <p>16 ask it again.</p> <p>17 That's also information that's</p> <p>18 retirement -- that's also information that's</p> <p>19 compiled by the Benefits Office, correct?</p> <p>20 A Yes.</p> <p style="text-align: right;">Page 31</p>	<p>8 Are you saying the information that</p> <p>9 we just talked about, the granting or denial of</p> <p>10 benefits claims, the funding of claims, that's not</p> <p>11 in the counsel report, but it's in a director's</p> <p>12 report?</p> <p>13 Is that what you're saying?</p> <p>14 A Correct.</p> <p>18 Q Okay. When you say director's</p> <p>19 report, what director are you referencing?</p> <p>20 A The Plan director.</p> <p style="text-align: right;">Page 33</p>

<p>12 MR. DENNIE: So I'm going to again 13 request that those reports be provided. I 14 requested it yesterday. There are multiple 15 requests for production that have asked for records 16 similar to that, and I believe that was 37, 57, 58, 17 there's probably more. When are we going to get 18 those documents? We requested those probably nine 19 months ago. 20 MR. MEEHAN: If you're directing that 21 to me, you know, send me a request. 22 MR. DENNIE: We did nine months ago. Page 34</p>	<p>1 focused on the deposition today. I'll respond to 2 you as soon as possible. 7 BY MR. DENNIE: 8 Q So I want to be clear, I can't ask 9 you too many questions about documents I've never 10 seen, but you and the witness yesterday both 11 confirmed that there are records that discuss the 12 funding of the Plan and whether benefits were 13 granted or denied. And you said they're in a 14 director's report, correct? 15 A To the best of my knowledge, yes. 16 Q Are you aware of what the contents of 17 those director's reports say? 18 <u>Let's start with the last quarterly</u> 19 <u>report that you indicated probably would be in</u> 20 <u>February of this year?</u> 21 A <u>No, I don't remember.</u> 22 Q <u>Do you remember the contents of the</u> Page 36</p>
<p>1 MR. MEEHAN: Well, send me a request 2 now telling me what you want and why you think 3 you're entitled to it. And like I said yesterday, 4 we'll take it under advisement and we'll get right 5 back to you. I want to make sure I know exactly 6 what you want, so if you can put it in writing so 7 there's no confusion. 8 MR. DENNIE: Well, just to be clear, 9 we're already on the record. So we're asking for 10 the director's report, the quarterly reports that 11 have been testified to by both of the witnesses 12 that have been withheld that were requested in our 13 first request for production many, many months ago. 14 And discovery is running out and now I'm deposing 15 witnesses and I don't have these report documents. 16 When can I get those? 17 I know you're new to the case, you 18 probably didn't handle that, but your colleague 19 has been in the whole time, so I need to know 20 when we can have them. Can we have them today? 21 MR. MEEHAN: I need you to send me a 22 written request on exactly what you want. I'm Page 35</p>	<p>1 <u>director's report for any quarter prior to the last</u> 2 <u>report that you reviewed?</u> 3 A <u>I don't remember.</u> 4 Q <u>The only way that I'm going to be</u> 5 <u>able to determine what's in those records is by</u> 6 <u>getting the records, because neither you or</u> 7 <u>Mr. Reynolds recalled the contents of the report,</u> 8 <u>other than you know that there's discussion of</u> 9 <u>funding, and there's a discussion of granting and</u> 10 <u>denial of benefits. Is that right?</u> 11 A <u>Correct.</u> 12 Q <u>Do you know how many claims go to</u> 13 <u>appeal to the board on a percentage basis?</u> 14 A <u>I don't know.</u> 15 Q <u>Is that included within the</u> 16 <u>director's report?</u> 17 A <u>I would think so.</u> 18 Q <u>If I asked you the same questions</u> 19 <u>about whether you recall the contents of the</u> 20 <u>director's report related to appeals of disability</u> 21 <u>benefits applications, would you give me the same</u> 22 <u>answer, that you don't recall the contents of any</u> Page 37</p>

1 director's reports?

2 A I'm sure I would.

8 Q Who are the beneficiaries under the
9 Plan?

10 A Who are the beneficiaries under the
11 Plan?

12 Q Yes, ma'am.

13 A The players.

14 Q What was the Plan created to do?

15 A The Plan was created to provide
16 retirement and disability benefits for the players.

Page 38

7 Q Are you aware of any steps that the
8 Plan administrator has taken to reduce bias?

9 A I'm not aware.

10 Q Are you aware of any steps that the
11 Plan administrator has taken to promote the
12 accuracy of the decisions?

13 A I'm not aware of any.

Page 40

Page 39

Page 41

11 (Pages 38 - 41)

12 communications about the interpretation of the Plan
13 guidelines with Bethany Marshall and Miki
14 Yaras-Davis oral conversations?

15 A As I recall, yes.

16 Q Did they orally ever give you their
17 analysis to certain provisions of the Plan?

18 A Yes.

19 Q Okay. Do you recall what their
20 analysis was?

21 A No.

Page 66

Page 68

1

3 Q Who on the committee represents the
4 interest of retired NFL players?

5 A I do.

6 Q So your duty is to represent the
7 interest of the retired NFL players on the
8 committee, correct?

9 A Correct.

10 Q Who on the board represents the
11 interest of retired NFL players?

12 A The NFLPA designee.

13 Q Okay. So it's your understanding
14 that the NFLPA designees have a duty to retired
15 players in their role on the board?

16 A Correct.

Page 69

18 (Pages 66 - 69)

<p>1</p> <p>3 So if we go down about halfway down</p> <p>4 the page, there it says, "NFLPA designated members:</p> <p>5 Sam McCullum, Jeff Van Note, Robert Smith."</p> <p>6 Did I read that correctly?</p> <p>7 A Correct.</p> <p>8 Q So when we were talking a minute ago</p> <p>9 about the members of the board that owe a duty to</p> <p>10 the retired players, are those these three</p> <p>11 individuals?</p> <p>12 A Correct.</p> <p>Page 70</p>	<p>Page 72</p>
<p>1</p> <p>?</p> <p>Page 71</p>	<p>1</p> <p>Page 73</p>

Page 78

Page 80

4 Q You do not have a law license?

5 A No.

6 Q You don't have a medical license?

7 A No.

8

Page 79

Page 81

<p>Page 102</p>	<p>8 Q Right before we broke to get you a 9 glass of water, you were indicating that if a 10 player called you about their disability benefits 11 application and indicated they had not received 12 their records, you would direct them to the Plan, 13 correct? 14 A Uh-huh. 15 Q The Plan being you would direct them 16 back to the benefits office? 17 A Correct. 18 Q Is that the kind of standard approach 19 the Players Association, if a player calls and 20 says, "I'm not receiving my records," go to the 21 retirement office to get those? 22 A Correct.</p> <p>Page 104</p>
<p>Page 103</p>	<p>Page 105</p>

9 Q Have you received any legal training
10 to help you decide and analyze disability claims?

11 A Now, when you say "legal training,"
12 what do you mean by that?

13 Q Training about laws and cases.

14 A You said training about laws or
15 cases?

16 Q And cases.

17 A And cases.

18 Not that I recall.

Page 114

Page 116

Page 115

Page 117

30 (Pages 114 - 117)

8 Q Do you understand when symptoms can
9 occur from head injuries that resulted from playing
10 in the NFL?

11 A Yes.

12 Q What do you understand?

13 A I understand that they can occur
14 right away or they can take a number of years --
15 months or years to manifest, surface.
16

Page 122

Page 124

18 Q Do you have any reason to dispute
19 that Mr. Cloud has incurred and received head
20 injuries while playing in the NFL?

21 A No, I don't have any reason to
22 dispute that.

Page 123

Page 125

32 (Pages 122 - 125)

1 Q Do you have any reason to dispute
2 that Mr. Cloud has had symptoms associated with
3 concussion syndrome while playing in the NFL?

4 A I don't have any reason to dispute
5 that.

6 Q You would agree that concussion
7 symptoms can worsen over time?

8 A Yes, I know that they can worsen over
9 time.

Page 126

Page 128

Page 127

Page 129

33 (Pages 126 - 129)

	<p style="text-align: right;">?</p> <p style="text-align: right;">Page 144</p>
<p style="text-align: right;">Page 143</p>	<p>14 Have you read any studies on</p> <p>15 orthopedic injuries sustained by players who have</p> <p>16 formerly played in the NFL?</p> <p>17 A Not that I recall.</p> <p>18 Q Have you read any white papers on</p> <p>19 orthopedic injuries commonly sustained by NFL</p> <p>20 players?</p> <p>21 A Not that I recall.</p> <p>22 Q Have you done any personal research</p> <p style="text-align: right;">Page 145</p>

37 (Pages 142 - 145)

- 1 on orthopedic injuries that are commonly incurred
- 2 on players who formerly played in the NFL?
- 3 A Not that I recall.

Page 146

Page 148

Page 147

Page 149

38 (Pages 146 - 149)

5 Q And if you flip to CLOUD-MIN-004, it
6 indicates it's a denial of reclassification request
7 from Mr. Cloud, correct?

8 A Correct.

Page 158

Page 160

10 Q Is there a repository of
11 interpretations that are provided to the Plan
12 document?

13 A A repository of interpretations?

14 Q Correct.

15 A You said of the Plan document?

16 Q Correct.

17 A Not to my knowledge.

Page 159

Page 161

41 (Pages 158 - 161)

12 Are you aware anywhere that someone
13 can go and see what interpretations of the Plan
14 have been applied in years past?
15 A No, I am not.

Page 162

Page 164

14 Q Okay. So in your 15 years on the
15 committee, you have asked for between 10 and 50
16 interpretation requests of Article 5, Deposition
17 Exhibit 1, correct?
18 A That's correct in that's what I said.

Page 163

Page 165

42 (Pages 162 - 165)

<p>1 Q So is it fair to say you were not 2 present in person or by phone on the November 15th, 3 16th, 2016 meeting? 4 A That is correct.</p>	<p>15 You indicated that the board decided 16 Mr. Cloud's appeal, his request for 17 reclassification, correct? 18 A Correct. 19 Q The members on the board who made 20 that decision were Katie Blackburn, Dick Cass, Ted 21 Philips, Sam McCullum, Jeff Van Note, and Robert 22 Smith, correct?</p>

Page 170

Page 172

Page 171

Page 173

44 (Pages 170 - 173)

<p>1 A Correct.</p> <p>2 Q If I wanted to know how the board</p> <p>3 members arrived at their decision to deny</p> <p>4 Mr. Cloud's appeal, I would need to talk to them</p> <p>5 individually, correct?</p> <p>6 MR. MEEHAN: Objection. Calls for a</p> <p>7 legal conclusion.</p> <p>8 But go ahead and give your answer,</p> <p>9 ma'am.</p> <p>10 THE WITNESS: Yes.</p> <p>Page 174</p>	<p>1</p> <p>20 So on the NFLPA side, the</p> <p>21 representatives, you indicated that Bethany</p> <p>22 Marshall, Miki Yaras-Davis, and the Groom Law Firm</p> <p>Page 176</p>
<p>?</p> <p>Page 175</p>	<p>1 was there representing the Players Association. Is</p> <p>2 that correct?</p> <p>3 A Correct.</p> <p>4 Q And for the Groom Law Firm you</p> <p>5 indicated that Alvaro Anillo, Doug Ell, Mike Junk,</p> <p>6 Mike Maricco were there from the Groom Law Firm,</p> <p>7 correct?</p> <p>8 A Maricco. Correct.</p> <p>9 Q Mike Maricco?</p> <p>10 A Maricco, yeah.</p> <p>11 Q Do the individuals who you listed</p> <p>12 from the Groom Law Firm also advise the committee?</p> <p>13 A Alvaro Anillo would be our adviser</p> <p>14 for the most part.</p> <p>Page 177</p>

45 (Pages 174 - 177)

5 Q Yesterday you heard Patrick Reynolds
6 confirm that there is a repository of information
7 for medical records for NFL players, correct?

8 A Correct.

9

Page 186

Page 188

Page 187

Page 189

48 (Pages 186 - 189)

	<p>5 As it pertains to Mr. Cloud's 2016</p> <p>6 reclassification benefits, did you write the</p> <p>7 decision letter in that case?</p> <p>8 A I did not.</p> <p>9 Q As it pertains to Mr. Cloud's 2016</p> <p>10 reclassification for benefits application, did you</p> <p>11 review a decision letter before it was sent out?</p> <p>12 A Not that I recall.</p> <p>13 Q As it pertains to Mr. Cloud's 2016</p> <p>14 reclassification for disability benefits</p> <p>15 application, did you review the decision letter and</p> <p>16 make any changes to it before it was sent out?</p> <p>17 A Not that I recall.</p> <p style="text-align: right;">?</p> <p style="text-align: right;">Page 200</p>
<p>3 Q Have you ever written a decision</p> <p>4 letter?</p> <p>5 A No.</p> <p>6 Q Do you review the decision letter</p> <p>7 before it goes out?</p> <p>8 A No.</p> <p>9 Q Have you ever made any changes to a</p> <p>10 decision letter before it goes out?</p> <p>11 A Not that I recall.</p> <p>20 Q Did you write the letter on</p> <p>21 Mr. Cloud's 2014 T&P benefits application?</p> <p>22 A I did not.</p> <p style="text-align: right;">Page 199</p>	<p style="text-align: right;">Page 201</p>

Page 202

Page 204

Page 203

Page 205

7 Q As of 7/17/14, were you aware of
8 Mr. Cloud receiving a concussion anywhere other
9 than playing in the NFL?

10 A Not that I recall.

11 Q As we sit here today, are you aware
12 of Mr. Cloud receiving a concussion anywhere other
13 than playing in the NFL?

14 A Not that I recall.

15 Q Okay. Were you creating a
16 distinction between the two because you asked me
17 "was I, am I," so is there something that I'm
18 missing?

19 A No, I just wanted to make sure. I
20 didn't know if you were talking about while I was
21 receiving his application or now, so that's why I
22 wanted to know so...

52 (Pages 202 - 205)

<p>1 Q But you're not aware of any 2 circumstance where Mr. Cloud has had another 3 concussion outside of playing in the NFL, isn't 4 that correct? 5 A Correct.</p> <p>16 Q Let's flip over to Exhibit 15, 17 DICC-003. 18 A I'm good. 19 Q I'm not asking you to read this word 20 for word because this one's a little bit longer, 21 but some of these notes I'm not able to read super 22 clearly, so I want to make sure I don't misread</p> <p style="text-align: right;">Page 206</p>	<p>1</p> <p style="text-align: right;">Page 208</p>
<p>1 them for you. Can you just go through like you did 2 with the notes from 2014 and read your notes from 3 February 22nd, 2016? 4 A Okay. "Mike A. Cloud, he already had 5 Inactive A. Again, he had credited seasons '99 6 through '05. He was a reclassification request for 7 Active Football. He was approved on his initial 8 Social Security -- initial T&P application by 9 virtue of his Social Security award. 10 Helmet-to-helmet collision on 10/31/04 while 11 playing with the Minnesota Vikings. Migraines,</p> <p style="text-align: right;">Page 207</p>	<p>1</p> <p>3 Q And you would agree the only 4 employment that Mr. Cloud has ever referenced was a 5 month of part-time employment at Equinox. Is that 6 correct? 7 A Based on that application, correct. 8 Q Do you know why he left Equinox? 9 A If memory serves me correct, from my 10 recent viewing of the application, it was 11 because -- I can't remember. I do remember seeing 12 something, but I can't remember exactly what it 13 was. 14 Q Would it surprise you that that was 15 concussion-related symptoms? 16 A What, the reason why he left? 17 Q Yes, ma'am. 18 A Would it surprise me? 19 Q Correct.</p> <p style="text-align: right;">Page 209</p>

3 Q Do you know why Mr. Cloud's contract
4 was terminated with the Giants in 2005?

5 A I don't.

6 Q Do you know that Mr. Cloud couldn't
7 remember basic running back plays that he had been
8 running his entire life?

9 A Okay.

10 Q Did you know that?

11 A I do remember seeing that in review
12 of the file.

k
Page 210

Page 212

Page 211

17 Q And, again, in this you note,
18 symptoms such as migraines, clinical depression,
19 memory loss, post-concussion syndrome, and vertigo.
20 Is that correct?
21 A Correct.

Page 213

54 (Pages 210 - 213)

	<p>19 BY MR. DENNIE:</p> <p>20 Q Is there any reason that you can</p> <p>21 think of that the Plan through the retirement</p> <p>22 office would not provide medical records and scans</p> <p>Page 222 Page 224</p>
<p>1</p> <p>Page 223</p>	<p>1 that were requested by Michael Cloud?</p> <p>2 A There was no reason not to be</p> <p>3 provided.</p> <p>4 Q You would agree that it's important</p> <p>5 for a player to have all their medical records and</p> <p>6 scans from a Plan neutral, correct?</p> <p>7 A If he so desires, yes. If it is</p> <p>8 important to him, I agree.</p> <p>9 Q Because a player can take those</p> <p>10 medical records and scans to their own doctor for</p> <p>11 an analysis, right?</p> <p>12 A This is true.</p> <p>13 Q And if they don't have the documents,</p> <p>14 they can't go take them to a doctor of their</p> <p>15 choice, correct?</p> <p>16 A I mean, you can't take what you don't</p> <p>17 have.</p> <p>18 Q So you would agree with me, correct?</p> <p>19 A I would agree that if they don't have</p> <p>20 it, they can't take it.</p> <p>21 Q Do you know Dr. Mandelbaum is?</p> <p>22 A I know the name.</p> <p>Page 223 Page 225</p>

57 (Pages 222 - 225)

<p>2 a former Plan physician?</p> <p>3 A I do.</p> <p>4 Q If Mr. Cloud requested all of his</p> <p>5 medical records and scans, and some of them were</p> <p>6 done by Dr. Mandelbaum, is there any reason that</p> <p>7 the Plan wouldn't provide them to him?</p> <p>8 A Not to my knowledge.</p> <p style="text-align: right;">Page 226</p>	<p>6 Q And if someone owes a duty to the</p> <p>7 players, as you testified earlier, you would agree</p> <p>8 that for the best opportunity to be successful in a</p> <p>9 disability application, is going to be provide the</p> <p>10 most full and extensive medical history that they</p> <p>11 can provide, correct?</p> <p>12 A Correct.</p> <p style="text-align: right;">Page 228</p>
<p>4 Q And if they weren't, Michael Cloud</p> <p>5 cannot use it in a disability benefits application</p> <p>6 any records he doesn't have, correct?</p> <p>7 A Correct, he can't use anything he</p> <p>8 doesn't have.</p>	<p>17 My question is simply: What</p> <p>18 complaints or riches have you heard?</p> <p>19 A So, again, if a player is denied his</p> <p>20 application, oftentimes, we get complaints about</p> <p>21 that, about the fact that he was denied the</p> <p>22 process, maybe the doctor, it could be any number</p> <p style="text-align: right;">Page 229</p>

<p>1 of things.</p> <p>2 Q And you gave me three. Correct me if</p> <p>3 I'm wrong, the three that you recall being</p> <p>4 complaints that you heard from players: One,</p> <p>5 complaints that they were denied benefits; two,</p> <p>6 complaints about neutral plan physicians; and,</p> <p>7 three, complaints about disability benefits</p> <p>8 process. Is that correct?</p> <p>9 A Correct.</p> <p>10 Q Are there any others that you recall?</p> <p>11 A No.</p> <p>12 Q What complaints do you recall about</p> <p>13 the disability benefits process that you heard?</p> <p>14 A It takes too long, having to travel</p> <p>15 to see the doctor, too many appointments.</p> <p>16 Q Anything else?</p> <p>17 A That's it.</p> <p>18 Q Have you ever heard complaints from</p> <p>19 players that they have been denied access to their</p> <p>20 medical records?</p> <p>21 A Not that I can recall.</p> <p>22 Q So the complaints about the process</p> <p style="text-align: right;">Page 230</p>	<p>1 A Just what you said, that they</p> <p>2 don't -- sometimes they don't think that the</p> <p>3 doctors are neutral.</p> <p style="text-align: right;">Page 232</p>
<p>1 that you mentioned, it takes too long, players have</p> <p>2 to travel to see a Plan neutral doctor, and there</p> <p>3 are too many doctor appointments. Is that correct?</p> <p>4 A Correct.</p> <p>5 Q Do you recall any others?</p> <p>6 A I don't.</p> <p>7 Q What complaints have you heard about</p> <p>8 the neutral plan physicians?</p> <p>9 A Didn't spend enough time, too brash,</p> <p>10 maybe didn't ask enough questions or the questions</p> <p>11 that the player thought he should ask.</p> <p>12 Q What else?</p> <p>13 A That's it, that I can think of.</p> <p>14 Q Complaints about the doctor, the</p> <p>15 doctor didn't spend enough time with them, they're</p> <p>16 too brash, they didn't ask enough questions. Is</p> <p>17 that correct?</p> <p>18 A That's correct.</p> <p>19 Q And have you ever heard players argue</p> <p>20 that the Plan doctors are not truly neutral?</p> <p>21 A Yes.</p> <p>22 Q What have you heard about that?</p> <p style="text-align: right;">Page 231</p>	

<p>Page 234</p>	<p>22 Q So the actual application they submit</p> <p>Page 236</p>
<p>Page 235</p>	<p>1 has been changed?</p> <p>2 A Correct.</p> <p>Page 237</p>

2 Q So you don't know who filed them or
3 the subject matter of any of the complaints that
4 you have read that are attached to this counsel
5 report. Is that correct?

6 A That's correct.

7 Q If I understood correctly from
8 yesterday, counsel report is prepared and
9 distributed quarterly, right?

10 A Correct.

11 Q So next week you're probably going to
12 get another counsel report, right?

13 A That is correct.

14 Q And the last one you received was
15 sometime in February?

16 A That is correct.

17 Q Do you remember what was on the
18 February report or attached thereto?

19 A I do not.

Page 242

22

Page 244

Page 243

20 Q You've already said a couple of times
21 you believe you owe a duty to the players, correct?

22 A Correct.

Page 245

62 (Pages 242 - 245)

<p>1 Q So you know from your experience 2 working for the Players Association how damaging it 3 is to them when their benefits are denied when they 4 have concussion syndrome, correct? 5 MR. MEEHAN: Object to the form. 6 You can go ahead. 7 BY MR. DENNIE: 8 Q You can answer. 9 A I know what they tell me. 10 Q And they told you it's really 11 damaging to them, correct? 12 A I may have been told that a time or 13 two.</p> <p>16 it. Okay? 17 You know that a denial of these 18 benefits are damaging to these players, don't you? 19 MR. MEEHAN: Objection to the form. 20 But, ma'am, make sure he answers</p> <p style="text-align: right;">Page 246</p>	<p>1 to them that their claims were denied when they 2 have serious medical conditions? 3 A I can't put a specific number, but 4 quite a few. 5 Q More than a hundred? 6 A I don't know about more than a 7 hundred. 8 Q Put an estimate on it. What do you 9 think? 10 A I've been there for many years. 11 Fifty maybe. I don't know.</p> <p style="text-align: right;">Page 248</p>
<p>16 Q Who, again, is the Plan created for? 17 A For the players. 18 Q The benefits of the Plan are created 19 for who? 20 A The players.</p> <p>21 Q How many times would you say players 22 have come to you and told you how damaging it was</p> <p style="text-align: right;">Page 247</p>	<p style="text-align: right;">Page 249</p>

	<p>9 THE WITNESS: It's going to be one or 10 the other. Social Security awards are the general 11 standard. And in his case, because he had a Social 12 Security award, it fell under 5.2(b). 13 BY MR. DENNIE: 14 Q I understand, but I just want to be 15 clear and understanding what you just testified to. 16 Had he not had his Social Security 17 award, based on your experience on the committee 18 for 15 years, and in your review of thousands of 19 applications, you believe he meets the criteria of 20 Section 5.2 also? 21 A Correct.</p> <p>Page 250</p>
<p>5 reclassification application compiles with Section 6 5.1 of Exhibit 1? 7 A Yes. 8 Q When Mr. Cloud was granted T&P 9 benefits in 2014, which criteria under 5.2 of 10 Exhibit 1 did he meet? 11 A 5.2(b).</p> <p>Page 251</p>	<p>Page 252</p> <p>Page 253</p>

<p>14 Q You're welcome to read it if you want 15 to, but generally explain to me what your 16 understanding of the "shortly after" definition as 17 shown in 5.3(e) of Exhibit 1 is. 18 A A player becomes disabled no later 19 than six months after his disability arises -- no 20 earlier, rather, but no later than 12 months 21 afterwards.</p> <p style="text-align: right;">Page 254</p>	<p>4 Does October 31st, 2004, occur during 5 his playing career? 6 A Correct. Yes. 7 Q We talked earlier, and I believe you 8 agreed, that you were aware and recall Mr. Cloud 9 was having trouble remembering basic football plays 10 after that collision. Do you recall that? 11 A I recall.</p> <p>21 I want you to correct me if I'm 22 wrong, but earlier you testified and agreed that</p> <p style="text-align: right;">Page 256</p>
<p>14 Your notes make reference to 15 Dr. Cronin indicating that the helmet-to-helmet 16 collision on October 31st, 2004, was the event that 17 caused his concussion-related syndrome. Is that 18 right? 19 A Yeah, that's correct.</p> <p style="text-align: right;">Page 255</p>	<p>1 concussion syndrome symptoms can advance over time? 2 A I did, yes. 3 Q And you're aware of that because you 4 worked with the Players Association and you even 5 read a few studies or articles, as I recall. Is 6 that correct? 7 A Correct.</p> <p style="text-align: right;">Page 257</p>

<p>Page 262</p>	<p>Page 264</p> <p>10 BY MR. DENNIE:</p> <p>11 Q If you will flip over to Section</p> <p>12 5.7(b) of Exhibit 1.</p> <p>13 A You said (b)?</p> <p>14 Q 5.7(b), yes, ma'am.</p> <p>15 A I'm there.</p> <p>16 Q What do you understand that Section</p> <p>17 to pertain to?</p> <p>18 A Reclassification of T&P benefits.</p> <p>Page 263</p>
	<p>Page 265</p>

<p>4 Q Is changed circumstances defined in</p> <p>5 the Plan?</p> <p>6 A No.</p> <p>7</p> <p>21 Q So do you want to change your answer</p> <p>22 on who came up with the definition of changed</p> <p>Page 266</p>	<p>1</p> <p>5 Q In your approximately 15 years on the</p> <p>6 committee, how many reclassification decisions have</p> <p>7 you been a part of?</p> <p>8 A Maybe between 10 and 15.</p> <p>9 Q And in the 10 or 15 reclassification</p> <p>10 decisions that you have been a part of, have you</p> <p>11 had to determine what changed circumstances means</p> <p>12 in all 10 or 15 of those cases?</p> <p>13 A Yes.</p> <p>14 Q What do you think it means?</p> <p>15 A It means a new or different injury or</p> <p>16 illness or impairment.</p> <p>Page 268</p>
<p>1 circumstances?</p> <p>2 A Yes, as a matter of fact I do. I</p> <p>3 don't know who came up with the definition.</p> <p>4</p> <p>Page 267</p>	<p>Page 269</p>

7 THE WITNESS: I agree that a new
8 impairment can include a concussion symptom, yeah.

Page 270

Page 272

8 Q Okay. Correct me if I'm wrong,
9 earlier you testified that as it pertains to
10 Mr. Cloud's 2016 reclassification decision letter,
11 you didn't read it before it went out, correct?

12 A That is correct.

16 Q So you certainly didn't tell anyone,
17 "This is what the definition of changed
18 circumstance that I want to include in this
19 decision letter," correct?

20 A Correct.

Page 271

14 Q Have you ever asked anyone to define
15 for you what changed circumstances means?

16 A Not that I recall.

Page 273

69 (Pages 270 - 273)

<p>22 Q Is clear and convincing defined</p> <p style="text-align: right;">Page 274</p>	<p>1 that there be a logical definition of clear and</p> <p>2 convincing that you would apply to every case?</p> <p>3 A Yes, it would be helpful.</p> <p>4 Q Because you want uniform consistency</p> <p>5 on the way that disability benefits applications</p> <p>6 are being decided, correct?</p> <p>7 A It would definitely be helpful.</p> <p>14 Q You would agree it's important for</p> <p>15 players to understand that there's uniformity in</p> <p>16 the way things are being applied across the board</p> <p>17 in disabled cases, correct?</p> <p>18 A I would agree with that, yeah.</p> <p style="text-align: right;">Page 276</p>
<p>1 anywhere in the Plan?</p> <p>2 A No.</p> <p>3 Q Has anyone told you what clear and</p> <p>4 convincing means?</p> <p>5 A Not that I recall.</p> <p>9 Q Have you come up with your own</p> <p>10 definition of what clear and convincing means?</p> <p>11 A I'm not sure.</p> <p>21 Q Don't you think it's important if</p> <p>22 you're trying to apply a set of facts to the Plan,</p> <p style="text-align: right;">Page 275</p>	<p>?</p> <p style="text-align: right;">Page 277</p>

<p>1</p> <p>10 Are you disputing that Mr. Cloud is</p> <p>11 disabled under the terms of Plan?</p> <p>12 A I am not.</p>	<p>12 Correct me if I'm wrong, but you</p> <p>13 testified earlier that a new concussion symptom can</p> <p>14 qualify as a new impairment, meaning it's a changed</p> <p>15 circumstance in the terms of the Plan, correct?</p> <p>16 A Yes.</p>

Page 282

Page 284

Page 283

Page 285

72 (Pages 282 - 285)

	<p>14 Q Correct me if I'm wrong, you said</p> <p>15 that the concussion symptoms that you know of are</p> <p>16 headaches, dizziness, sleepiness, and vertigo. Is</p> <p>17 that correct?</p> <p>18 A Correct.</p> <p>Page 294</p>
	<p>6 Q Are there any additional concussion</p> <p>7 symptoms that you know of?</p> <p>8 A Maybe forgetfulness.</p> <p>9 Q Anything else?</p> <p>10 A Anger.</p> <p>20 Q So, for example, forgetfulness, you</p> <p>21 might forget small things now, but five years from</p> <p>22 now you may not remember virtually anything. Is</p> <p>Page 295</p> <p>Page 297</p>

75 (Pages 294 - 297)

1 that a progression of concussion symptoms that
2 you've seen in other disability cases that you've
3 administered on the committee?
4 A Yes.

1 Q Is migraines a common concussion
2 symptom?

3 A Yes.

4 Q Is dementia a common concussion
5 symptom?

6 A Yes.

7 Q Is failure to maintain verbal fluency
8 a common concussion symptom?

9 A Yes.

10 Q Is unpredictability a common
11 concussion symptom?

12 A Yes.

13 Q Is irritability a common concussion
14 symptom?

15 A Yes.

16 Q Is mood swings a common concussion
17 symptom?

18 A Yes.

20 Based on your role on the committee,
21 and your understanding of concussion symptoms,
22 trouble sleeping may be a symptom?

Page 298

?

Page 300

1 A I believe so.

2 Q Is sensitivity to light a common
3 concussion symptom that you have seen?

4 A Yes.

5 Q Is paranoia a common concussion
6 symptom that you've seen?

7 A Yes.

8 Q Is lack of focus or inability to
9 focus a common concussion symptom that you've seen?

10 A Yes.

11 Q Is suicidal thoughts a common
12 concussion symptom that you've seen?

13 A Yes.

14 Q Is failure to grasp reality a common
15 concussion symptom that you've seen?

16 A I believe so.

17 Q Is failure to maintain an appointment
18 a common concussion symptom?

19 A Yes.

20 Q Is depression a common concussion
21 symptom?

22 A Yes.

Page 299

8 Q Based on the research that you've
9 read on concussions and common media writings, is
10 it fair to say that over a period of time, these
11 concussion symptoms can get much more severe?

12 A Yes, it is fair to say that they can
13 get worse.

Page 301

21 Q If you look on CLOUD-AR-108, of
22 Exhibit 7, you will see a discussion of neck, lower
Page 302

Page 304

1 back foot, lower leg issues. Do you see that?
2 A I see it.
3 Q Ultimately the conclusion in his file
4 was Mr. Cloud suffered from both neurological and
5 orthopedic ailments. Is that correct?
6 A Correct.

Page 303

Page 305

77 (Pages 302 - 305)

	<p>17 Q Have you ever seen a PET scan 18 presented to the committee on a player's 19 application? 20 A I believe I have. 21 Q What do you understand a PET scan to 22 be?</p> <p>Page 306 Page 308</p>
	<p>1 A A scan of the brain. 2 Q And do you understand or know what 3 that PET scan shows? 4 A Abnormalities of the brain.</p> <p>10 Q When you look at a PET scan, what 11 shows the abnormality? 12 A The coloring maybe, the shading of 13 the scan of the brain. 14 Q So let me make sure we're on the same 15 page and saying the same things. 16 So if you've got a scan of the brain 17 or a picture of the brain, there's going to be most 18 likely some sort of cylindrical or circular spot 19 that's a different color which shows there's an 20 abnormality, correct? 21 A I think that's what it is.</p> <p>Page 307 Page 309</p>

78 (Pages 306 - 309)

<p data-bbox="743 940 766 970">?</p> <p data-bbox="766 974 850 1003">Page 310</p>	<p data-bbox="1386 974 1471 1003">Page 312</p>
<p data-bbox="766 1873 850 1902">Page 311</p>	<p data-bbox="876 1184 1409 1293">5 Q Okay. Are you aware of any other 6 circumstance where Mr. Cloud sustained orthopedic 7 injuries outside of playing in the NFL?</p> <p data-bbox="876 1302 1153 1331">8 A I am not aware.</p> <p data-bbox="1386 1873 1471 1902">Page 313</p>

<p>Page 314</p>	<p>1 A Yep. Yes. 2 Q Okay. Is Dr. Canizares still a 3 neutral physician? 4 A Yes. 5 Q Is he someone you interface with 6 often? 7 A No. 8 Q Is there any reason that x-ray films, 9 scans were not provided to Mr. Cloud when he 10 requested them? Is there any reason for that? 11 A You said when he requested them? 12 Q Yes, ma'am. 13 A I don't know. I'm not aware of any 14 reason. 15 Q If you will flip over to 174, so 16 CLOUD-AR-174 of Exhibit 2. 17 A I'm here, okay. You said 174? 18 Q Yes, ma'am. 19 A Okay. 20 Q Does this appear to be a copy of 21 Dr. DiDio's report? 22 A It does.</p> <p>Page 316</p>
<p>15 Q All right. Either way, if you flip 16 to AR-172 of Exhibit 2, do you see there that there 17 were various x-rays that were performed on 18 Mr. Cloud? 19 A Yes. 20 Q And those were by Dr. Canizares? 21 A Canizares. 22 Q Canizares?</p> <p>Page 315</p>	<p>1 Q Is there any reason that the full 2 copy of Dr. DiDio's report was not provided to 3 Mr. Cloud until 2019? 4 A I have no idea.</p> <p>18 Q And down toward the bottom of 174, 19 there's a reference that Mr. Cloud was forgetting 20 small things like people's names. Is that correct? 21 A I see it, yes. 22 Q Are there any other concussion</p> <p>Page 317</p>

<p>1 symptoms reported back in 2010?</p> <p>2 A I see headaches, vertigo. Bed spins.</p> <p>3 Q That's part of vertigo?</p> <p>4 A Yeah, I see that now. Yeah.</p> <p>5 Q Okay.</p> <p>6 A Repetition.</p> <p>7 Q I'm sorry?</p> <p>8 A Repetition, repeating himself.</p> <p>9 Q Repetition and?</p> <p>10 A And then I said "repeating himself."</p> <p>11 Q So you're saying repeating himself is</p> <p>12 a concussion symptom?</p> <p>13 A I would think so.</p> <p>14 Q Okay.</p> <p>15 A I would think it can be.</p> <p>16 Q Any others that you recall?</p> <p>17 A That's it.</p> <p>18 Q So the four concussion symptoms that</p> <p>19 you see from the 2010 request for line of duty</p> <p>20 benefits; headaches, vertigo, forgetting names, and</p> <p>21 repeating himself. Is that correct?</p> <p>22 A Correct.</p> <p style="text-align: right;">Page 318</p>	<p>17 Q There's a listing of post-concussion</p> <p>18 syndrome, clinical depression, dementia, migraine,</p> <p>19 vertigo, impair verbal fluency. And then if you</p> <p>20 flip to CLOUD-AR-079, it also list migraine</p> <p>21 headaches, depression, memory loss, vertigo,</p> <p>22 insomnia, unpredictable irritability. Do you see</p> <p style="text-align: right;">Page 320</p>
<p>6 Q Okay. So if you would look at</p> <p>7 CLOUD-AR-175, there's again a reference to the</p> <p>8 October 31, 2004 concussion, correct?</p> <p>9 A I see it.</p> <p>10 Q And I read it, and tell me if I'm</p> <p>11 wrong, "There is clear documentation of a single</p> <p>12 concussion sustained on October 31, 2004, while</p> <p>13 playing with the New York Giants."</p> <p>14 Do you see that?</p> <p>15 A I do.</p> <p>16 Q Okay. And that's the head-to-head</p> <p>17 collision that we talked about a couple of times</p> <p>18 today, correct?</p> <p>19 A That's my assumption, yes.</p> <p style="text-align: right;">Page 319</p>	<p>1 that?</p> <p>2 A I do.</p> <p>3 Q In addition to the neurological</p> <p>4 issues associated with concussion syndrome, there's</p> <p>5 also several orthopedic issues presented in the</p> <p>6 section titled, "Disabilities and Causes." Is that</p> <p>7 correct?</p> <p>8 A Correct.</p> <p>9 Q There are acute compartment syndrome,</p> <p>10 plantar fasciitis, nerve injury, bilateral</p> <p>11 shoulders, bilateral elbow, bilateral wrists,</p> <p>12 hands, fingers, bilateral feet and toes, bilateral</p> <p>13 ankles, bilateral knees, bilateral hips, lumbar,</p> <p>14 cervical, thoracic. And then if you flip over to</p> <p>15 CLOUD-AR-097, severe pain in right foot, left great</p> <p>16 foot, left hip, basic neck, lower back, numbness in</p> <p>17 right left leg, arms and fingers.</p> <p>18 Did I get all the orthopedic issues?</p> <p>19 A You did.</p> <p>20 Q And so those were the bases by which</p> <p>21 Mr. Cloud presented in his T&P application in 2004?</p> <p>22 A That's what it appears to be to me.</p> <p style="text-align: right;">Page 321</p>

<p>1</p>	<p>11 Q As it pertains to the nuts and bolts 12 and the specific wording and language used in 13 Exhibit 4, you were certainly not the person who 14 provided it, correct? 15 A That is true. 16 Q And if Mr. Reynolds testified he 17 wasn't the one who provided it either, neither the 18 two people on the committee provided the discussion 19 and analysis shown in Exhibit 4. Is that correct? 20 A That is correct. 21 Q Don't you think it's important for 22 whoever wrote this letter to actually discuss this</p> <p>Page 322 Page 324</p>
<p>7 Q Did you write Exhibit 4? 8 A I did not. 9 Q Do you know who wrote Exhibit 4? 10 A I do not. 11 Q Did you review Exhibit 4 before it 12 was disseminated to Mr. Cloud? 13 A Not that I recall.</p> <p>Page 323</p>	<p>Page 325</p>

<p>9 Q So when I said instead of describe, I</p> <p>10 said description, because it was correct in the</p> <p>11 sentence. So for someone to write a legal letter</p> <p>12 like this, you would expect that they would get the</p> <p>13 description of the information that they are</p> <p>14 providing from the people that actually came up</p> <p>15 with the decision, right?</p> <p>16 A One would think so.</p> <p>17 Q Okay. And in this case that wasn't</p> <p>18 done?</p> <p>19 A That's correct.</p> <p>20 Q Do you believe this letter was</p> <p>21 written by the Groom Firm?</p> <p>22 A I believe it could have been, yes.</p> <p>Page 326</p>	<p>10 Q Looking at Exhibit 4, did you ever</p> <p>11 receive a copy of Exhibit 4?</p> <p>12 A Not that I recall.</p> <p>Page 328</p>
<p>Page 327</p>	<p>Page 329</p>

<p>12 Q Under "Disabilities and Causes" that</p> <p>13 starts on CLOUD-AR-290, it lists migraines,</p> <p>14 clinical depression, significant memory and</p> <p>15 attention problems, vertigo, impaired verbal</p> <p>16 fluency. Then we flip over to the continuation, it</p> <p>17 says, migraines, clinical depression, memory loss,</p> <p>18 attention and decision problems, impaired verbal</p> <p>19 fluency, post-concussion syndrome, vertigo,</p> <p>20 affective disorder. Do you see that?</p> <p>21 A I do.</p> <p>22 Q Do you agree that there are new</p> <p style="text-align: right;">Page 330</p>	<p>1 Mr. Cloud's request for reclassification, right?</p> <p>2 A Correct.</p> <p>3 Q And it was your job to apply the</p> <p>4 terms of the Plan to Mr. Cloud's request, right?</p> <p>5 A Correct.</p> <p>6 Q We've listed off three new symptoms</p> <p>7 of concussions that you have agreed are new,</p> <p>8 correct?</p> <p>9 A Correct.</p> <p>10 Q Those new concussion symptoms equal a</p> <p>11 changed circumstance as set forth in the Plan,</p> <p>12 correct?</p> <p>13 MR. MEEHAN: Same objection.</p> <p>14 Go ahead.</p> <p>15 THE WITNESS: It looks that way,</p> <p>16 correct.</p> <p>17 BY MR. DENNIE:</p> <p>18 Q I'm going to go back to what I asked</p> <p>19 you earlier. After reviewing all of this</p> <p>20 information, listening to Mr. Reynolds testify,</p> <p>21 listening to Mr. Cloud talk, and answering</p> <p>22 questions all day, do you now believe that</p> <p style="text-align: right;">Page 332</p>
<p>1 concussion symptoms listed on Exhibit 5?</p> <p>2 A There are.</p> <p>3 Q Those include; affective disorder,</p> <p>4 attention and decision problems, and significant</p> <p>5 memory and attention problems, correct?</p> <p>6 A Correct.</p> <p>9 You testified earlier that a new</p> <p>10 concussion symptom can qualify as a changed</p> <p>11 circumstance, correct?</p> <p>12 A Correct.</p> <p style="text-align: right;">Page 331</p>	<p>1 Mr. Cloud did, in fact, qualify for</p> <p>2 reclassification in 2016?</p> <p>3 MR. MEEHAN: Objection. Asked and</p> <p>4 answered. And Mr. Cloud's remarks are not on the</p> <p>5 record, so -- they have been described to some</p> <p>6 extent on the record, but they are not part of the</p> <p>7 record.</p> <p>8 So go ahead, please.</p> <p>9 THE WITNESS: I believe that these</p> <p>10 new symptoms could have been changed circumstances.</p> <p style="text-align: right;">Page 333</p>

<p>22</p>	<p>1 answered.</p> <p>2 Go ahead.</p> <p>3 THE WITNESS: I think I agree that</p> <p>4 they can be changed circumstances.</p> <p>9 Q You actually agree that they are</p> <p>10 changed circumstances?</p> <p>11 MR. MEEHAN: Objection to the form.</p> <p>12 Go ahead.</p> <p>13 THE WITNESS: They are changes to his</p> <p>14 original application, yes.</p> <p>15 BY MR. DENNIE:</p> <p>Page 334</p>
<p>19 Q You also agreed that his new</p> <p>20 concussion symptoms are changed circumstances,</p> <p>21 right?</p> <p>22 MR. MEEHAN: Objection. Asked and</p>	<p>1 BY MR. DENNIE:</p> <p>2 Q You would agree that these changed</p> <p>3 symptoms are a changed circumstance as set forth in</p> <p>4 5.7(b) of Exhibit 1, wouldn't you?</p> <p>5 A Yes, they are changed circumstances.</p> <p>6</p> <p>9 To be clear, you denied Mr. Cloud's</p> <p>10 application for reclassification, correct?</p> <p>11 A Correct.</p> <p>12 Q Did you write the reclassification</p> <p>13 decision of Mr. Cloud?</p> <p>14 A You mean the letter?</p> <p>15 Q Correct.</p> <p>16 A No, I did not.</p> <p>17 Q Did you review your reclassification</p> <p>18 decision for Mr. Cloud before it went out?</p> <p>19 A Not that I recall.</p> <p>20 Q Did you talk to anyone about the</p> <p>21 reclassification decision before it went out?</p> <p>22 A Not that I recall.</p> <p>Page 335</p>

<p>9 Q Is CLOUD-AR-478 through CLOUD-AR-482 10 as shown in Exhibit 7, the decision rendered by the 11 committee on Mr. Cloud's reclassification 12 application? 13 A Yes.</p> <p>18 Q This letter was written by someone, 19 but they never talked to you about what to put in 20 the letter, did they? 21 A Not that I recall. 22 Q So their deposition of changed</p> <p style="text-align: right;">Page 338</p>	<p>1 A I don't know who, but someone here at 2 Groom. 3</p> <p style="text-align: right;">Page 340</p>
<p>5 Q So whoever wrote this came up with 6 their own definition of changed circumstance was 7 not approved by you, correct? 8 A I don't recall talking to anyone 9 about the wording of the letter. 10 Q And just to be clear, I asked you a 11 little bit different question. 12 You didn't approve their definition 13 of changed circumstance. Is that right? 14 A Not that I recall. 15 Q You've seen legal letters before, 16 right? 17 A Yes. 18 Q You would agree this certainly 19 appears to be written by a lawyer, doesn't it? 20 A Yes. 21 Q And who would be the lawyer that 22 would write a letter on behalf of the committee?</p> <p style="text-align: right;">Page 339</p>	<p>1</p> <p style="text-align: right;">Page 341</p>

Page 346

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Page 348

1

17 Q Okay. So going back to our
18 discussion earlier, you would agree that a treating
19 medical professional has indicated that Mr. Cloud's
20 major injury occurred on October 31, 2004, which is
21 the game we talked about between the Giants and the
22 Minnesota Vikings. Is that right?

Page 347

Page 349

<p>1 A Correct.</p> <p>2 Q It also references him being cut by</p> <p>3 two teams because he couldn't remember plays. Is</p> <p>4 that correct?</p> <p>5 A Correct.</p> <p>6 Q Based on your notes and your</p> <p>7 recollection and review of the file, you would</p> <p>8 agree those two teams are the New York Giants and</p> <p>9 the New England Patriots, correct?</p> <p>10 A Correct.</p> <p style="text-align: right;">Page 350</p>	<p>1 that's a common progression of concussion syndrome,</p> <p>2 right?</p> <p>3 A One more time, please.</p> <p>4 Q Sure.</p> <p>5 Based on your experience on the</p> <p>6 committee, review of medical studies and review of</p> <p>7 thousands of pages of medical records, you would</p> <p>8 agree that the progression of concussion syndrome</p> <p>9 that Mr. Cloud has exhibited is common?</p> <p>10 A You said is common?</p> <p>11 Q Yes, ma'am.</p> <p>12 A It does happen, yes.</p> <p>13 Q And you've seen that?</p> <p>14 A I'm sorry?</p> <p>15 Q You've seen that?</p> <p>16 A I've seen it documented and referred</p> <p>17 to, yes.</p> <p>18 Q Okay. And in this circumstance, it</p> <p>19 was documented and referred to in Mr. Cloud's case,</p> <p>20 right?</p> <p>21 A Yes.</p> <p style="text-align: right;">Page 352</p>
<p>6 Q This report by Dr. Cronin references</p> <p>7 that Mr. Cloud started experiencing neurological</p> <p>8 issues shortly after the October 31, 2004 collision</p> <p>9 in the game between the Giants and the Vikings. Is</p> <p>10 that right?</p> <p>11 MR. MEEHAN: Objection to the form.</p> <p>12 Go ahead.</p> <p>13 THE WITNESS: It does infer that,</p> <p>14 yes.</p> <p>15 BY MR. DENNIE:</p> <p>16 Q And then the report goes on to</p> <p>17 reference since that time the neurological symptoms</p> <p>18 have continued to progress. Is that correct?</p> <p>19 A Correct.</p> <p>20 Q Based on your experience on the</p> <p>21 committee reviewing medical studies and review of</p> <p>22 thousands of medical records, you would agree</p> <p style="text-align: right;">Page 351</p>	<p style="text-align: right;">Page 353</p>

<p>3 Q Is this e-mail from you dated</p> <p>4 July 23rd, 2014, what you're considering your</p> <p>5 e-mail ballot pertaining to Mr. Cloud's request for</p> <p>6 T&P benefits?</p> <p>7 A Correct.</p> <p>8 Q I mean, is this all you submit when</p> <p>9 you vote on a case?</p> <p>10 A If I'm responding to Patrick's</p> <p>11 e-mail, yes.</p> <p>12 Q Is there ever a situation where you</p> <p>13 provide more detailed analysis about how you came</p> <p>14 to your decision?</p> <p>15 A If we disagree on a case, then I</p> <p>16 would include it -- I might include it in the</p> <p>17 e-mail.</p> <p>18 Q But as it pertains to Mr. Cloud's</p> <p>19 case, you didn't provide any detail analysis about</p> <p>20 how you arrived at your decision on his 2014 T&P</p> <p>21 request for benefits, correct?</p> <p>22 A Correct.</p> <p style="text-align: right;">Page 354</p>	<p>1 A I do.</p> <p>2 Q If we go to the far right it says,</p> <p>3 "Decision." And underneath decision it says, "No</p> <p>4 changed circumstances," correct?</p> <p>5 A Correct.</p> <p>6 Q Earlier today you testified that</p> <p>7 there were, in fact, changed circumstances,</p> <p>8 correct?</p> <p>9 A I said it looked like there could</p> <p>10 have been, yes.</p> <p>11 Q As it pertains to Mr. Cloud's 2016</p> <p>12 reclassification request, you're not aware of</p> <p>13 providing any additional analysis than what we see</p> <p>14 in CLOUD-AR-473 through 475 of Exhibit 7. Is that</p> <p>15 right?</p> <p>16 A I don't recall doing anything, yes.</p> <p style="text-align: right;">Page 356</p>
<p>t.</p> <p>9 Q Will you go to CLOUD-AR-473 through</p> <p>10 475 of Exhibit 7?</p> <p>11 A I'm here.</p> <p>12 Q As it pertains to Mr. Cloud's 2016</p> <p>13 reclassification request, is this the e-Ballot that</p> <p>14 we've been discussing earlier today?</p> <p>15 A Yes.</p> <p>16 Q And if you flip over to CLOUD-AR-475,</p> <p>17 is this a portion of the spreadsheet that you</p> <p>18 prepared?</p> <p>19 A Yes.</p> <p>20 Q If we look down below where it says</p> <p>21 "REDACTED," it says, "Miscellaneous Benefit, Cloud,</p> <p>22 Michael." Do you see that?</p> <p style="text-align: right;">Page 355</p>	<p style="text-align: right;">Page 357</p>

	<p>1</p> <p>21 Q It mentions on 1204, "Thank you! The</p> <p>22 case summaries that are missing for me are and</p> <p>Page 358 Page 360</p>
	<p>1 Michael Cloud" after the redaction. Do you see</p> <p>2 that?</p> <p>3 A Uh-huh. I do.</p> <p>4 Q Did the Groom Firm write up a memo</p> <p>5 analyzing Mr. Cloud's case?</p> <p>6 A They did case summaries. I'm pretty</p> <p>7 sure back then they had started doing the case</p> <p>8 summaries.</p> <p>9 Q Why do they do case summaries?</p> <p>10 A To summarize the cases for those that</p> <p>11 are reviewing it, to kind of give those of us who</p> <p>12 review it an idea of what we will find within the</p> <p>13 depths of the case, or the paperwork rather, the</p> <p>14 file, the administrative records.</p> <p>15 Q You would agree that it's important</p> <p>16 that you actually review the medical records, not</p> <p>17 the case summary, correct?</p> <p>18 A Yes.</p> <p>19 Q And you feel certain that you</p> <p>20 reviewed Mr. Cloud's entire file prior to comes to</p> <p>21 a decision?</p> <p>22 A I feel certain that I reviewed his</p> <p>Page 359 Page 361</p>

91 (Pages 358 - 361)

<p>1 file to the best of my ability. So I don't know if</p> <p>2 I ended up being distracted and put it down and</p> <p>3 didn't go back to it or skipped a page or two, but</p> <p>4 I feel certain that I did read most of it to the</p> <p>5 best of my ability.</p> <p>6 Q Do you ever recall a time where you</p> <p>7 just relied on the case summary and did not read</p> <p>8 the entire file?</p> <p>9 A I don't recall that.</p> <p>10 Q Could that have happened?</p> <p>11 A Anything can happen.</p> <p>12 Q You would agree it's important for</p> <p>13 you to read the entire case file to come to a</p> <p>14 decision, right?</p> <p>15 A I do agree, it is important.</p> <p>16 Q We talked about this earlier a little</p> <p>17 bit, it's extremely important for the player</p> <p>18 seeking benefits, right?</p> <p>19 A That is correct.</p> <p>20 Q And you hold the duty to the retired</p> <p>21 NFL players who are seeking benefits and you know</p> <p>22 that it's vastly important that you review the</p> <p style="text-align: right;">Page 362</p>	<p style="text-align: right;">Page 364</p>
<p>1 medical file in total before rendering a decision,</p> <p>2 right?</p> <p>3 A I do.</p> <p>4 Q But you would admit sometimes you may</p> <p>5 not read the entire file?</p> <p>6 A I'm human.</p> <p>7 Q Is that yes?</p> <p>8 A Like I said, anything can happen,</p> <p>9 so...</p> <p style="text-align: right;">Page 363</p>	<p>1</p> <p style="text-align: right;">Page 365</p>

16 Q Do you understand that Mr. Cloud
17 first starting making a request for his records for
18 the first time in 2006?

19 A I do recall seeing that in the
20 administrative record.

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Page 366

Page 368

Page 367

Page 369

93 (Pages 366 - 369)

1

9 Q If you're directing Mr. Cloud to go
10 see Dr. DiDio so he can be evaluated for
11 neurological issues, wouldn't you expect the doctor
12 to order some sort of scans?

13 A I would hope that he would, yes.

14 Q And you saw Dr. DiDio's report in
15 Exhibit 7, there were no scans ordered, correct?

16 A As I recall, correct.

17

Page 374

Page 376

Page 375

Page 377

95 (Pages 374 - 377)

<p>3 Q Based on your experience seeing</p> <p>4 thousands of cases and thousands of records, you've</p> <p>5 seen many circumstances where the onset of</p> <p>6 concussion-related symptoms don't take place for</p> <p>7 eight to ten years, right?</p> <p>8 A I have seen cases where they don't</p> <p>9 take place right away, yes.</p> <p>10 Q Some may be delayed up to eight to</p> <p>11 ten years?</p> <p>12 A So the research says, yes.</p> <p>Page 378</p>	<p>Page 380</p> <p>S</p> <p>Page 381</p>
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18 Q You would agree that the Groom Law
19 Firm drafted the Plan?
20 A Drafted the Plan?
21 Q Yes, ma'am.
22 A Yes.

Page 382

Page 384

Page 383

Page 385

97 (Pages 382 - 385)

A C K N O W L E D G E M E N T O F
D E P O N E N T

I, CHRISTOPHINE SMITH, do hereby acknowledge I have read and examined the foregoing pages of testimony, and the same is a true, correct and complete transcription of the testimony given by me, and any changes or corrections, if any, appear in the attached errata sheet signed by me.

9.2.21

Date

Christophine Smith

CHRISTOPHINE SMITH

1 Michael Cloud vs. The Bert Bell/Pete Rozelle NFL
2 Player Retirement Plan

3 CHRISTOPHINE SMITH

4 INSTRUCTIONS TO THE WITNESS:

5 Please read your deposition over carefully and
6 make any necessary corrections. You should state
7 the reason in the appropriate space on the errata
8 sheet for any corrections that are made.

9 After doing so, please sign the errata sheet
10 and date it.

11 You are signing same subject to the changes you
12 have noted on the errata sheet, which will be
13 attached to your deposition.

14 It is imperative that you return the original
15 errata sheet to the deposing attorney within thirty
16 (30) days of receipt of the deposition transcript by
17 you. If you fail to do so, the deposition
18 transcript may be deemed to be accurate and may be
19 used in court.
20
21
22

1 Veritext Legal Solutions
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3
4 E R R A T A S H E E T

5 Case Name: Michael Cloud vs. The Bert Bell/Pete
Rozelle NFL Player Retirement Plan

6
7 Witness Name: CHRISTOPHINE SMITH

8
9 Deposition Date: August 5, 2021

10
11 Page No. Line No. Change/Reason for Change

12 4:4-- "Josephine" should be "Christophine" / correcting name of deponent
13 12:13-- "Boswell, B-O-S-W-E-L-L" should be "Doswell, D-O-S-W-E-L-L" / correcting name of deponent
14 54:14-- "yet" should be "yesterday" / word correction
15 64:9-- "mine" should be "mind" / word correction
16 97:14-- "support" should be "report" / word correction
17 98:8-- "about playing" should be "about applying" / word correction
18 106:12-- "I not." should be "I am not." / missing word
19 107:16-- "up in" should be "of" / word correction
20 138:8-- "reading it" should be "reading about it" / missing word
21 186:11-- "that my knowledge" should be "to my knowledge" / word correction
22 203:5-- "credit seasons" should be "credited seasons" / word correction
203:13-- "disable" should be "disabled" / word correction
204:12-- "deem his" should be "deem him" / word correction
205:21-- "receiving his" should be "reviewing his" / word correction
290:16-- "they actually" should be "they've actually" / word correction
355:5-- "applied more" should be "applied for" / word correction

Christophine Smith

Signature

9. 2. 21

Date

APPENDIX 4

From: Christian Dennie
To: Michael L. Junk; Edward J. Meehan
Subject: Cloud v. Bert Bell
Date: Friday, August 6, 2021 8:37:09 AM

Gentlemen,

I enjoyed meeting you all over the course of the last few days. Thank you for hosting the depositions. I will get you my receipts from travel in the next few days.

As we discussed during the depositions, I believe many, many records have not been produced that are responsive to our discovery requests that were propounded many, many months ago. I learned during the depositions that there are Director's Reports and Counsel Reports made on a quarterly basis that reference funding for the Plan, distribution of benefits, and statistics for grants and denials. These are documents responsive to RFP 37, 57, and 58. These reports may say other things, but those are areas that were referenced by the deponent. I understand the Counsel Reports may have some attorney-client information, but contain other information that would not fit into that box. The attorney-client information can be redacted. At a minimum, I need these documents produced by noon on Monday so I have sufficient time to review them in advance of Mr. Vincent's deposition. Being that Mr. Vincent will likely give me more information about other documents that have not been produced, I request that you go back through our 1st and 2nd RFP and give me all documents that are responsive. Otherwise, we will have to seek to compel responsive information, which I prefer not to do.

I am following up again on Dr. Mandelbaum's records. When will they be produced?

At the end of the deposition, you mentioned you would assist us in locating the IMPACT exam conducted on Mr. Cloud by the New England Patriots. If you can provide that, we would greatly appreciate it.

As you know, we were able to obtain a lot of favorable information during the depositions. It's not too late to get back on Judge Ferguson's calendar for mediation and abide by the court's order. As we discussed after the deposition, the Plan has a lot of risk in this case that it has never had to address. No one has ever been able to look behind the curtain as we have been granted the opportunity to do. What's going on behind the curtain does not look good for the Plan. We are going to continue to depose the relevant people and will continue to find information that supports the illegality of the Plan. We are going to seek to compel the production of the Board members for deposition (as we discussed and you confirmed disagreement). I feel confident we will be able to obtain even more valuable information in those depositions. With that said, you can eliminate your risk and end the roadmap I am developing for all future claims filed by other players by getting this resolved and giving Mr. Cloud what he is owed. Otherwise, as I mentioned with the NCAA as an example, when you push the envelope and try to get rulings from court's, sometimes it doesn't work out the way you wanted. A bad precedent will lead to even more litigation and worse results. The Plan (and associated bodies) made mistakes here. With all that said, let me know when you want to talk. We are always open. If, on the other hand, you prefer to litigate and permit Mr. Cloud to fully develop the facts, we have no problem moving forward.

I look forward to hearing from you. Have a good day and good weekend.

Christian Dennie, FCI Arb
Barlow Garsek & Simon, LLP
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Southlake, TX 76092
817.731.4500 (Telephone)
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Principal office is located at 920 Foch Street, Fort Worth, TX 76107.

APPENDIX 5

From: Christian Dennie
To: Meehan, Edward J. (EMeehan@groom.com)
Cc: Junk, Michael L. (mjunk@groom.com); Lee Ann Burks; "Christian Dennie (CDennie@bgsfirm.com)"
Subject: RE: Civil Action No.: 3:20-CV-01277-E; Cloud v. Bert Bell/Pete Rozelle NFL Player Retirement Plan
Date: Monday, August 16, 2021 8:43:00 AM

Mr. Meehan,

Good morning. I hope you had a nice and relaxing weekend.

As I have mentioned in multiple emails, calls, and in-person discussions, I do not desire to fight over discovery. The documents that we are requesting should have been produced long ago. Frankly, I would have expected to see these documents produced along with initial disclosures. Nonetheless, I would still prefer not to have to address these missing documents with the Court. It benefits both sides to reach a resolution on the outstanding discovery.

Our position is simple, Rule 26(b)(1) of the Federal Rules of Civil Procedure allows Plaintiff to "obtain discovery regarding any nonprivileged matter that is relevant to any part's claim or defense. . . ." The outstanding discovery at issue "is reasonably calculated to lead to the discovery of admissible evidence." The 5th Circuit addressed issues similar to this in Crosby and permitted to discovery. In Schultz, the 5th Circuit addressed evidence of "inconsistent treatment" of similar claims by an ERISA plan. Following this line of cases, the Court, on July 22, 2021, ordered that Plaintiff was permitted to conduct discovery as follows:

Plaintiff may conduct discovery on the following subjects: (1) requests and communications between Plaintiff and Defendant requesting medical documentation; (2) any medical records in possession of Defendant that have not been provided to Plaintiff; and (3) such other information that is relevant to the completeness of the Administrative Record in this case and/or whether Defendant complied with ERISA's procedural regulations.

We are seeking discovery of the Director's reports (prepared quarterly), Counsel's reports (prepared quarterly), and the database of claims that were granted or denied for T&P benefits and whether the athlete received Inactive A or Active Football benefits. This discovery is relevant and responsive to RFPs. In addition to being relevant and reasonably calculated to lead to the discovery of admissible evidence, the production of these records is necessary to evaluate 1) inconsistent treatment by the Plan of similar claims; 2) to determine with the Plan complied with ERISA's procedural regulations; and 3) to evaluate whether the Plan acted arbitrarily and capriciously in denying Plaintiff's claim. As your witnesses have noted, the members of the Board are fiduciaries and the Plan was designed for players like Plaintiff as the beneficiaries. We must have this information to explore disputed matters. As I have previously noted, Plaintiff was denied the opportunity to question witnesses based on these records. We learned for the first time of the existence of such records during the depositions.

You noted in an email that I don't know the contents of the Director's reports (prepared quarterly), Counsel's reports (prepared quarterly), and the database of claims. You are correct that I have never seen these documents. They have been withheld from production. Your witnesses, however, testified that the director's reports and counsel's reports have information about funding for the Plan, distribution of benefits, and statistics for grants and denials. As to the database, Mr. Vincent testified that queries can be run to produce T&P applications that show what was granted or denied, whether Inactive A or Active Football benefits were awarded, and possibly the basis for the decision to grant Inactive A or Active Football benefits. This is information that we need.

Again, I am happy to discuss these issues with you in an effort to resolve this dispute.

Christian Dennie, FCI Arb
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APPENDIX 6



NFL PLAYER BENEFITS

PENSION PLAN

200 St. Paul Street, Suite 2420
Baltimore, Maryland 21202
Phone 800.638.3186
Fax 410.783.0041

November 23, 2016

Mr. Michael Cloud
120 Mont Blanc Drive
Heath, Texas 75032

Re: Bert Bell/Pete Rozelle NFL Player Retirement Plan—Final Decision on Review

Dear Mr. Cloud:

At its November 16, 2016 meeting the Retirement Board of the Bert Bell/Pete Rozelle NFL Player Retirement Plan ("Plan") considered your appeal from the Disability Initial Claims Committee's ("Committee") decision denying your request for reclassification of your total and permanent disability ("T&P") benefits to the Active Football category. We regret to inform you that the Retirement Board denied your appeal for the reasons described below.

Discussion

The Plan received your original application for T&P benefits on July 1, 2014. As you know, the Committee found you to be totally and permanently disabled by virtue of your Social Security Administration ("SSA") disability award, and it awarded you Inactive A T&P benefits, effective May 1, 2014. The basis for the Committee's decision was explained to you in a letter dated July 23, 2014. You did not appeal that decision.

By letter received February 17, 2016, your representative, Jennifer Cloud, requested that your Inactive A benefits be reclassified to the Active Football category. She stated that you "became disabled in 2005, while playing for the New York Giants due to cumulative mental disorder," and she submitted a copy of your SSA file and other records.

The Committee denied your request for reclassification by letter dated March 2, 2016.

By letter received September 2, 2016, Ms. Cloud appealed the Committee's decision to the Retirement Board. With the appeal, she stated that your SSA award resulted from a severe mental disorder stemming from multiple concussions, and she argued that your disability arose shortly after your October 2004 head trauma. Ms. Cloud submitted additional medical records with her appeal, such as a report from psychologist Dr. John Cronin dated February 2, 2012.

Mr. Michael Cloud
November 23, 2016
Page 2

At its November 16, 2016 meeting, the Retirement Board reviewed your request for reclassification and determined that it must be denied. Section 5.7(b) governs requests for reclassification such as yours. It permits reclassification only where a Player "shows by evidence found by the Retirement Board... to be clear and convincing that, because of changed circumstances, the Player satisfies the conditions of eligibility for a benefit under a different category of T&P benefits." The Retirement Board interprets Section 5.7(b)'s "changed circumstances" requirement to mean a new or different impairment from the one that originally qualified you for T&P benefits. Because you seek reclassification to Active Football, you would have to clearly and convincingly show that (1) you have a new or different impairment (Section 5.7(b)), (2) that new or different impairment arose while you were an Active Player (Section 5.3(a)), and (3) it caused you to be totally and permanently disabled "shortly after" it first (Section 5.3(a)). Under Section 5.3(e) of the Plan, you satisfy the "shortly after" requirement if you became totally and permanently disabled within six months of when your disabling condition or impairment first arose. Conversely, you do not meet the "shortly after" requirement if you became totally and permanently disabled more than twelve months after the condition or impairment arose. The Retirement Board has "the right and duty to determine whether the 'shortly after' standard is satisfied" for any claim of total and permanent disability falling within this six to twelve month period.

The Retirement Board reviewed your 2014 application for T&P benefits and noted that it was based on a combination of orthopedic, neurological, and cognitive impairments, such as post-concussion syndrome, clinical depression, dementia pugilistica, migraine, vertigo, impaired verbal fluency, acute compartment syndrome, plantar fasciitis, cluneal nerve injury, and multiple orthopedic impairments. The Retirement Board also noted that your request for reclassification is based on what you call "severe" mental impairments, but those are the same impairments listed in your 2014 application, and they formed the basis of your award of Inactive A T&P benefits (and your SSA award). Thus, the Retirement Board determined that you have not met Section 5.7(b)'s reclassification requirements because you have not clearly and convincingly shown that you are totally and permanently disabled by a new or different impairment. The Retirement Board also determined that, even if your request for reclassification were based on a new or different impairment, the medical evidence you submitted does not show that you meet the requirements for the Active Football category. The evidence you submitted does not show that you are totally and permanently disabled, and it all falls well outside any conceivable "shortly after" period required for Active Football benefits. The Retirement Board noted that, for the Active Football category, it is not enough that your disability first arise during your NFL career; it must also become totally and permanently disabling "shortly after" it first arises.

Mr. Michael Cloud
November 23, 2016
Page 3

In any event, the Retirement Board also determined that your appeal was untimely under Section 12.6(a). The Retirement Board noted that (1) according to Plan records, you received the decision letter on March 4, 2016; (2) that decision letter advised you of the 180-day appeal deadline (which expired on August 31, 2016); and (3) the Plan did not receive your appeal until September 2, 2016, two days after the 180-day deadline expired.

For these reasons, the Retirement Board concluded that it cannot honor your request to reclassify your existing Inactive benefits to the Active Football category. For this reason, the Retirement Board denied your appeal.

Appeal Rights

You should regard this letter as a final decision on review within the meaning of Section 503 of the Employee Retirement Income Security Act of 1974, as amended, and the regulations issued thereunder by the Department of Labor. You are entitled to receive, upon request and free of charge, reasonable access to, and copies of, all documents, records, and other information relevant to your claim for benefits. You have the right to bring an action under Section 502(a) of the Employee Retirement Income Security Act of 1974, as amended, within 42 months from the date of this letter, which is May 16, 2020.

Please call the NFL Player Benefits Office if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Michael B. Miller". The signature is written in a cursive, flowing style.

Michael B. Miller
Plan Director

Enclosure

cc: Jennifer Cloud

APPENDIX 7

**BERT BELL/PETE ROZELLE NFL PLAYER RETIREMENT PLAN
RETIREMENT BOARD MEETING MINUTES**

November 15-16, 2016
Atlanta, Georgia

A meeting of the Retirement Board of the Bert Bell/Pete Rozelle NFL Player Retirement Plan (the "Retirement Plan" or "Plan") was held in Atlanta, Georgia on November 15-16, 2016. The following individuals attended:

Retirement Board:

Management Council designated members:

Katie Blackburn
Dick Cass
Ted Philips

NFLPA designated members:

Sam McCullum
Jeff Van Note
Robert Smith

Commissioner's Delegate:

Harold Henderson

Additional Attendees:

Gerald Abrams (by telephone)	Eric Field	Heather McPhee
Alvaro Anillo	Chris Flohr	Mike Miller
Audrey Askew (by telephone)	Bruce Gould	Lashay Rose
Hoby Brenner	Eric Harnish	Craig Svendsen
Mike Casey	Mike Junk	Sam Vincent
Andre Collins	Kristen Kirk	Adora Williams
Tom DePaso	Larry Lamade	Michele Yaras-Davis
Jack Donlan	Alex LeBlanc	
Stacey Eisenstein	Belinda Lerner	
Doug Ell	Mike Maricco	
Larry Ferazani	Bethany Marshall	

All present could hear each other and be heard. Unless otherwise noted, all actions were unanimous.



Individual Player Cases

The Retirement Board took the following actions (unless otherwise noted, all actions were unanimous):

A. BENEFIT CONTINUATION



B. MISCELLANEOUS BENEFITS



2. **Michael Cloud** On review of appeal from earlier decision to award Inactive A total and permanent disability benefits effective May 1, 2014, denied appeal for reclassification to the Active Football category for failure to meet the requirements of Plan section 5.7(b).



C. Credited Seasons

